

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2015

Public Authority: Chief Constable of Cambridgeshire Constabulary
Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
PE29 6NP

Decision (including any steps ordered)

1. The complainant has requested specific Taser Deployment forms from 2014 and 2015. Cambridgeshire Constabulary advised that to comply with the request would exceed the appropriate limit at section 12 of the FOIA. The complainant disagreed with this and also the Constabulary's interpretation of his request. The Commissioner's decision is that the Constabulary was entitled to rely on section 12 and also that it had properly interpreted the request. No steps are required.

Background

2. The request can be followed on the '*What do they know?*' website¹.
3. In asking for an internal review the complainant makes reference to a different request which he had located on the Constabulary's website. This can be found online².

¹

https://www.whatdotheyknow.com/request/selected_taser_deployment_for_ms#comment-61539

² <https://www.cambs.police.uk/about/foi/disclosure/PUB0322-2015.pdf>

4. The Commissioner has produced guidance entitled '*Interpreting and clarifying requests*' which can be found on his website³.

Request and response

5. On 25 March 2015, the complainant wrote to the Constabulary and requested information in the following terms:

"Could you please release the TASER deployment forms from 2014 and 2015 in relation to

- 1. TASER use within police stations*
- 2. TASER use within a private residence where the psychological issues tick box was checked or the the [sic] powers / policy cited relates to mental health.*

I expect personally identifiable information to be redacted from the forms before their release".

6. The Constabulary responded on 22 April 2015. It stated that to comply with the request would exceed the appropriate limit in section 12(1) of the FOIA.
7. On 20 May 2015 the complainant requested an internal review. His basis for doing so was as follows:

"I would like the review to consider how the incidents referred to in the response to the FOI request with your reference 0322/15 were identified and if a similar strategy could be applied to identify the TASER deployment forms requested in part two of this request.

I note I am not requesting any information which is not present on a TASER deployment form, nor am I seeking for any distinction to be made if a TASER use was inside, or outside".

8. Following an internal review the Constabulary wrote to the complainant on 16 July 2015. It upheld reliance on section 12(1) and advised:

"Having considered all the available information, I am of the view that the above exemption was correctly applied on this occasion.

³ Interpreting and clarifying requests - ?

The reason for this is that your original request clearly asked for information in relation to the use of TASER within police stations or private property and to do this would require the reading of each and every TASER use form in order to achieve this".

Scope of the case

9. The complainant contacted the Commissioner on 16 July 2015 to complain about the way his request for information had been handled. His complaint stipulated:

"The public body's response to my request for an internal review does not address the points I made when requesting the review".

10. The Commissioner notes that the grounds for requesting an internal review involve the second part of a different request which the Constabulary dealt with, as well as interpretation of the wording 'within'. The complainant also wishes the Commissioner to consider the application of section 12.

Reasons for decision

Interpretation of request

11. It is the Commissioner's view that public authorities must interpret information requests objectively and should avoid reading into the request any meanings that are not clear from the wording. Furthermore, if the request clearly specifies exactly what information or documents the requester wants, the authority will comply by providing this information (unless it is exempt from disclosure).

12. According to his guidance:

"If the authority finds there is more than one objective reading of the request then it must go back to the requester to ask for further clarification. It should not attempt to guess which interpretation is correct".

And:

"When an authority receives an unclear or ambiguous FOIA request, its Section 16 duty to provide advice and assistance will be triggered and it must offer the requester help to clarify the request".

13. The request in this case stipulates that it relates to the use of Taser 'within' police stations or 'within' private residences. However, when asking for an internal review the complainant then stipulates that his request does not seek "*any distinction to be made if a TASER use was inside, or outside*".
14. The initial point that the Commissioner will consider is the interpretation of the wording 'within' and whether or not the Constabulary's interpretation was reasonable or required clarification.
15. In correspondence with the Commissioner the complainant advised:

"I think it is reasonable to use the word "within" to describe a location, if it is inside a building or not..

I think that using the term "within a private residence" would clearly include the garden of a home, or outbuildings. The distinction being made when saying "a private residence" is clearly between a private and a public space such as a highway or a location which is not a private residence such as a public building".
16. In its response the Constabulary explained to the complainant that:

"The address details recorded on the form do not indicate whether the location was a private residence or whether the incident occurred within that address or external to it".
17. The complainant has not queried whether or not the form records whether a location is in fact a 'private' address. He has only queried the element about the location being 'within' as opposed to 'external'. This is therefore the only element under consideration.
18. According to the Shorter Oxford English Dictionary 5th Edition, definitions of the word 'within' include the following:

"in the interior, on the inner side; inside, internally", and

"In or into the house; indoors. Also in the inner part of the house..."
19. Therefore, in accordance with this definition, the Commissioner's view is that the Constabulary has properly interpreted the request as meaning 'inside' either police or residential premises. In his opinion there is no other obvious interpretation that he considers the word 'within' to have in this context other than that of being 'inside' a dwelling. Accordingly, his view is that the Constabulary was not required to go back to the complainant to seek further clarification.

20. The Commissioner accepts that the Constabulary was only aware of one reading of the request when it provided its response to the complainant and that it therefore did not breach the duty to provide advice and assistance under section 16 of the FOIA.
21. When asking for an internal review the complainant advises that his request does not seek "*any distinction to be made if a TASER use was inside, or outside*". However, as stated above, the Commissioner considers the Constabulary's reading of the request to have been reasonable. Whilst he notes that the complainant makes reference to a different request when asking for an internal review (see paragraph 3 above), it is important to note that the request referred to postdates this request so cannot be considered and, furthermore, it also asks for different information without reference to the word 'within'.
22. The Commissioner finds that the Constabulary objectively read and interpreted the request. It was therefore not required to seek further clarification or provide further advice and assistance to the complainant. He therefore concludes that there has been no breach of the FOIA by the Constabulary and that it was not required to compare the complainant's response with a different response to a differently worded request which postdates his own request.

Section 12 – cost of compliance

23. 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.
24. 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'). These are:
 - (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."*
25. 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 this case is £450, which is equivalent to 18 hours' work.

26. 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.
27. The Constabulary advised the complainant that it estimated to comply with his request would take not less than 25 hours. It explained:

"This is due to the way TASER forms for Cambridgeshire Constabulary officers are compiled and retained as well as the method used for recording all of the information requested by your questions. The first task in retrieving the relevant documents would be to retrieve all the TASER forms in respect of these officers and this has been done. Having reviewed each of these forms it is clear that the full information required by your request is not contained therein with regard to the location of the incident and or the powers or policy cited for the use of the TASER. The address details recorded on the form do not indicate whether the location was a private residence or whether the incident occurred within that address or external to it. To ascertain the full information in relation to each use of TASER is assessed to take in excess of 25 hours to achieve. This has been based on a dip sample of TASER deployment forms".

28. When conducting its internal review the Constabulary explained to the complainant that it would exceed the cost because the:

"... request clearly asked for information in relation to the use of TASER within police stations or private property and to do this would require the reading of each and every TASER use form in order to achieve this.

Therefore the original decision made is upheld".

29. In correspondence with the Commissioner COLP further explained:

"I calculated excess cost based on there being no fewer than 300 TASER records being created within any given year. I personally "dip sampled" 20 of the completed TASER forms of all types and recorded the time taken as being 1 hr and 45 minutes. Allowing for errors, I felt it reasonable to assess the average time taken to be in excess of 5 minutes per form.

I was able to do this in this way as I had no need to retrieve documents as a colleague had printed the complete file of all completed TASER use forms for 2014 in order to complete an earlier FOI request (our reference 0119/2015). I also noted on the file that I had previously worked on a request (0373/2014) which asked for a 5 month period of TASER usage and recorded that in

those 5 months, there were 140 forms created – this reinforced my belief that 300 was a reasonable figure to work from.

It is my view that the s12 cost exemption was used accurately given "my" interpretation of his request and that my s16 advice was appropriate. I have also tried to engage with the applicant to refine their request in order to provide him with information relevant to his request and I remain open to this. I would further advise that his reliance on a previous response (our 0322/2015) is also unsafe as that request referred to "firing" of a TASER as opposed to the "use" of a TASER, which would include: drawing; aiming and red-dotting of the weapon. I make this distinction within the s16 advice which I gave".

30. Having considered the estimates provided the 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

31. 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 Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
32. In this case the Constabulary has explained to the complainant about how the information is held and why compliance would exceed the limit. In its refusal notice it advised him as follows:

"... under my duties under s16 of the Act I would suggest that limiting your request to the calendar year of 2014 alone and also the "usage" as being those classed as "firing" would enable me to extract the information within the cost limit. If you were able to limit the "non-firing" use of TASERs to a simple statistic this would be achievable within cost also.

In revising your request it would be useful to be advised which sections you require to be provided from the completed forms".

33. The Constabulary did offer to respond to a modified request, if one were sent, and tried to explain how the requested data is held. Furthermore, as explained above, the Commissioner finds that the interpretation of this request was reasonable. He therefore finds there was no breach of section 16.

Other matters

34. The complainant has drawn attention to the annotation he placed on WDTK after making his request. It is important to note that annotations such as these are not correspondence with the public authority itself. The public authority concerned will not have sight of this unless they go onto the WDTK site itself, which they have no requirement to do; the public authority will only receive the request itself. If a complainant wishes to draw attention to something such as the request referred to in the annotation, then it must be included within the body of the request itself.
35. Had the complainant asked for the Constabulary to internally review and thereby revisit its citing of the cost limit, then further details as to what is recorded and what is retrievable within that limit would hopefully have been provided – and, if not, then the Commissioner could have properly considered this specific issue in a decision notice.
36. During the course of his investigation the Commissioner liaised further with the Constabulary and again brought its attention to the later request referred to by the complainant. In its response the Constabulary advised:

*"I would point out that [the complainant] originally asked for information in respect of TASER use **within** buildings and in his Appeal suggested that he wished to have information in relation to all use (internal/external) of TASERs as well as pointing to a release of statistics collated after my original response. Our Internal Review could only look at the original request and decide whether the response was accurate, at that time and concluded that it was.*

Whilst I would be content to defend our original position of the application of s12 I recognise the change of emphasis in [the complainant]'s request for review and the later extraction of information related to a different request. If [the complainant] wishes to receive the information in relation to this change then I would be able to extract and provide that information within 20 working days".

37. The Constabulary was happy for the Commissioner to forward this proposal to the complainant in an effort to informally resolve the case. The Commissioner therefore took these steps and invited the complainant to have this different request answered. The complainant did not agree to this but asked the Commissioner to proceed with his complaint on the grounds that the Constabulary had not properly interpreted his original request.

Right of appeal

38. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

39. 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.
40. 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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