

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2016

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
PO Box 3167
Stafford
ST16 9JZ

Decision (including any steps ordered)

1. The complainant requested information relating to locations at which child sexual exploitation had occurred. Staffordshire Police refused this request on cost grounds under section 12(1) of the FOIA.
2. The Commissioner's decision is that Staffordshire Police cited section 12(1) correctly and so it was not obliged to comply with this request.

Request and response

3. On 17 July 2015 the complainant wrote to Staffordshire Police and requested information in the following terms:
 - "1) Since 1 January 2012, please give specific names of locations or premises in your force area where it is known to police that Child Sexual Exploitation (CSE) has taken place*
 - 2) Since 1 January 2012, please give specific names of locations or premises in your force area where people who were the subject of missing person reports, who were known to be at risk of CSE, have been located*
 - 3) Since 1 January 2012, please give specific names of locations or premises in your force area where children known to be at risk of CSE were trafficked*
 - 4) For each location and premises listed above please specify:*
 - a. The nature of the evidence of CSE (ie presence of used condoms, alcohol, empty bottles of alcohol, evidence of drugs)*
 - b. Whether the evidence indicated the CSE encompassed grooming and sexual activity."*

4. After a delay, Staffordshire Police responded on 4 September 2015. It refused the request and cited the exemptions provided by the following sections of the FOIA:
 - 23(5) (information relating to, or supplied by, security bodies)
 - 30(1) (information held for the purposes of an investigation)
 - 40(2) (personal information)
5. The complainant requested an internal review and Staffordshire Police responded with the outcome of the review on 12 October 2015. The conclusion of this was that the refusal of the request under the exemptions cited previously was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 14 October 2015 to complain about the refusal of his information request. The complainant indicated that he did not agree that the exemptions cited by Staffordshire Police applied.
7. During the investigation of this case Staffordshire Police changed its position and cited section 12(1) of the FOIA as its grounds for refusing the request, withdrawing reliance on the exemptions it had cited previously. Staffordshire Police informed the complainant of this change in position on 10 December 2015 and the complainant subsequently confirmed that he wished the Commissioner to consider whether section 12(1) had been cited correctly.
8. The following analysis covers the citing of section 12(1), as well as recording the breach of the FOIA through the late response to the request.

Reasons for decision

Section 17

9. Section 17(1) requires that, where a public authority is refusing a request, it must send a notice to that effect within 20 working days of receipt of the request. Staffordshire Police failed to respond within this timeframe in this case and, in so doing, it breached section 17(1) of the FOIA. The Commissioner comments further on this breach in the "Other matters" section below.

Section 12

10. Section 12(1) provides that a public authority is not obliged to comply with a request where it estimates that the cost of doing so would exceed the appropriate limit, which for Staffordshire Police is £450. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "fees regulations") provide that the cost of a request must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours. The fees regulations also specify the tasks that can be taken into account when forming a cost estimate as follows:
 - Determining whether the requested 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.
 - Extracting the information from a document containing it.
11. A public authority is required to estimate the cost of a request, rather than form an exact calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by Staffordshire Police was reasonable; if it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, section 12(1) applied and it was not obliged to comply with the FOIA.
12. Turning to the explanation given by Staffordshire Police of its cost estimate, the central point made by Staffordshire Police is that, prior to April 2014, it did not have a system in place to "tag" child sexual exploitation (CSE) cases and enable retrieval of information relating to such cases simply. This meant that it would be necessary to review the file relating to each potentially relevant crime to establish whether it was a case involving CSE, prior to extracting the information requested by the complainant.
13. The estimate given by Staffordshire Police was of the time that reviewing each potentially relevant crime file would take. Staffordshire Police referred to the numbers of sexual offence files relating to under 18s from the start of the period specified in the request (January 2012) to when cases began to be tagged as CSE cases. It stated that there were 584 files of this kind for 2012 and 860 for 2013. It gave an estimate of five minutes per file to ascertain whether it was a CSE case.
14. Whilst Staffordshire Police did not give detailed reasoning for its five minute estimate, the figures given by Staffordshire Police show that

there are 1,444 files concerning sexual offences relating to under 18s for 2012 and 2013. Therefore, even if the estimate was considerably lower than an average of five minutes per file, the time taken would still be in excess of the cost limit. This estimate also does not include the time that would be taken in extracting and collating the requested information from files that had been identified as relevant, nor the time that would be taken on information dating from after the CSE tag began to be used. Whilst gathering information from cases with a CSE tag would be a comparatively simple task, it would still take some time.

15. The key issues for the Commissioner to consider are whether he accepts the representations from Staffordshire Police that cases were not tagged as CSE until April 2014, and whether this means that it would be necessary to review a large number of crime records to identify those that are relevant to the request.
16. On the first point, the Commissioner has no basis on which to dispute that the CSE tag was not used prior to April 2014, so accepts this point. It follows from this that he also accepts that this means it would be necessary to review a large number of potentially relevant crime records to ascertain if they were CSE cases. He accepts that it would be reasonable for this to include all cases concerning sexual offences relating to under 18s, and also that reviewing crime records for CSE cases would be a task within those specified in the fees regulations and listed above.
17. For these reasons, the Commissioner accepts that it was reasonable for Staffordshire Police to estimate that the cost of complying with the complainant's information request would exceed the limit of £450. Section 12(1) therefore applied and Staffordshire Police was not obliged to comply with the complainant's information request.

Section 16

18. Section 16(1) of the FOIA provides that all public authorities are under a duty to provide advice and assistance to any person who has made or who intends to make an information request to it. The Commissioner's published guidance on section 12¹ sets out the following minimum advice and assistance that a public authority should provide to a requester when refusing a request on cost grounds:

¹ https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

- either indicate if it is not able to provide any information at all within the appropriate limit; or
 - provide an indication of what information could be provided within the appropriate limit; and
 - provide advice and assistance to enable the requester to make a refined request.
19. In this case Staffordshire Police addressed its section 16(1) duty by stating that it was unable to provide advice on how the request could be refined to bring it within the cost limit. The Commissioner has reservations about accepting that there was no useful advice that Staffordshire Police could have provided given that it has tagged CSE cases since April 2014, but he notes that during the investigation of this case some information of relevance to the complainant's request was disclosed to the complainant by Staffordshire Police. Given that disclosure, the Commissioner does not find any breach of section 16(1) in this case.

Other matters

20. Where a public authority cites a different provision for refusing a request during the Commissioner's investigation than was cited in correspondence with the requester, the Commissioner is bound to accept that late citing and analyse if that provision has been cited correctly. In this case, however, he would note his concern that Staffordshire Police failed to establish at the time of refusing the request whether it could comply with the complainant's request within the cost limit. Upon receipt of a request, Staffordshire Police should first establish whether it holds the requested information and whether it is possible to comply with the request within the cost limit, prior to considering citing any of the exemptions provided by Part II of the FOIA.
21. As well as the finding above that Staffordshire Police contravened the FOIA through failing to respond to the complainant's request within 20 working days of receipt, a separate record has been made of this breach. The Commissioner will consider taking action should evidence from other cases suggest that there are systemic issues within Staffordshire Police that are resulting in delayed responses.

Right of appeal

22. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

23. 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.
24. 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

Ben Tomes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF