

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2016

Public Authority: Chief Constable of Merseyside Police
Address: Canning Place
Liverpool
Merseyside
L1 8JX

Decision (including any steps ordered)

1. The complainant has requested information about the staff turnover in a particular department of Merseyside Police over eight years. Merseyside Police refused to comply with the request on the grounds that doing so would exceed the appropriate limit established under section 12(1) of the FOIA.
2. The Commissioner's decision is that Merseyside Police it is entitled to rely on section 12(1). The Commissioner requires no steps to be taken.

Request and response

3. On 21 March 2016, the complainant wrote to Merseyside Police and requested information in the following terms:

"I would like to find out the staff turnover for [department, redacted] for the last 8 years.

The [department] consists of 1 A grade, and 2 B grades, could I find out the turnover for those particular roles please.

Could I also request to find out how many days were lost in total through sickness from those roles as well please for the last 8 years.

Also, if possible, could I request to compare the staff turnover for the [department] compared to [similar departments] throughout the Force."

4. There followed an exchange of correspondence regarding the request, during which Merseyside Police informed the complainant that the information could not be provided within the costs limits established under section 12 of the FOIA and that in any case it would be exempt from disclosure under section 40(2) (personal information).
5. On 12 April 2016 the complainant submitted a fresh request for information ("the revised request"), which reduced the scope of her earlier request:

"Could you please go off the revised request in the email I sent yesterday for a "number" only, for staff turnover, over "X" amount of years.

Please disregard the request for sickness days lost, as I appreciate the sickness info might identify individuals."

6. Merseyside Police subsequently summarised the revised request as follows:

"A 'number' only in relation to staff turnover for [department] preferably covering the last 8 years but for whatever time period can be researched within the FOI time/cost limits".

7. The Commissioner considers this to be a fair representation of the revised request, based upon the discussions that had taken place between Merseyside Police and the complainant. It is this request which is the focus of this decision notice.
8. On 13 May 2016, Merseyside Police responded to the revised request. It explained that it was not obliged to comply with the request on the grounds that the information was exempt under section 40(2) (personal information).

Scope of the case

9. The complainant contacted the Commissioner on 6 June 2016 to complain about the way her request for information had been handled. The Commissioner has not required the complainant to ask Merseyside Police to conduct an internal review of her revised request in view of the similarity between it and her request of 21 March 2016, for which an internal review was conducted and section 40(2) upheld.

10. During the Commissioner's investigation Merseyside Police informed the Commissioner that it was relying primarily on section 12 to refuse to comply with the revised request on the grounds that compliance with it would exceed the appropriate limit. It said it would apply section 40(2) in the event that the Commissioner found that section 12 did not apply.
11. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
12. The scope of this decision notice is therefore whether Merseyside Police was entitled to rely upon section 12 to refuse to comply with the revised request.

Reasons for decision

13. Section 12(1) allows a public authority to refuse to comply with a request for information if it estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations").
14. The appropriate limit for public authorities such as Merseyside Police is set in the fees regulations at £450. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours work in this case.
15. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
 - a. determining whether it holds the information;
 - b. locating a document containing the information;
 - c. retrieving a document containing the information; and
 - d. extracting the information from a document containing it.
16. The four activities are sequential, covering the retrieval process of the information by the public authority.
17. Merseyside Police confirmed that it holds information falling within the scope of the request. However, it estimated that the cost of complying

with the request would exceed the appropriate limit of £450 or 18 hours work.

18. Firstly, it explained that it was interpreting the request as being for a turnover figure for the past eight years, and not any part thereof. The complainant had requested that its response should be guided by whatever time period could be searched within the FOI time/cost limits. Merseyside Police noted that it was not obliged by the FOIA to comply with such an approach.
19. When considering this point, the Commissioner notes that her guidance on section 12¹ states that a public authority is not obliged to search for, compile or disclose some of the requested information before refusing a request that it estimates will exceed the appropriate limit. Therefore, Merseyside Police was not obliged to conduct searches up to the costs limit, in stages, as the complainant asked. It was entitled to interpret the request as being for the turnover figure for the full eight year period specified in the original request.
20. Taking the request as being for staff turnover in a particular department over the last eight years, Merseyside Police explained that its Human Resource (HR) files only commenced being held electronically from 2009 (seven years ago).
21. It said that the only way of looking at staffing information going back eight years (to 2008) would be to view the paper HR file of every police staff employee. This amounts to approximately 2,600 files. To view the HR files of all police staff that have left the organisation would amount to at least 700 people since 2010. The number of police staff who have left Merseyside Police since 2008 is not readily available but would clearly be higher than the 2010 figure. Merseyside Police said it was not able to provide an approximation pro-rata with the rate of staff loss since 2010 for the years 2008 and 2009 because there had been an increased rate in leavers since 2010 due to cuts in public expenditure which caused the Force to lose staff at a greater rate than was previously the case.
22. Therefore, 2,600 existing police staff HR files and files for at least 700 police staff leavers would have to be searched to obtain the requested

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

information - a total of more than 3,300 current and previous police staff.

23. Locating the requested information would involve a manual search of each of the 3,300+ files. Working at a rate of five minutes per file to locate retrieve and extract the information (although in reality some files would be thicker than others and so five minutes per file was judged to be a conservative estimate) would take at least 16,500 minutes or 275 hours. This method would significantly exceed the appropriate limit of 18 hours.
24. Merseyside Police said it had considered whether it could respond to the request without searching all the HR files. However, it said that HR files are filed by employee number and there is no way of reducing the number of files that would have to be viewed by the manner in which they are filed.
25. It explained that it is not possible to run an electronic report which can show a complete history of a particular post. Furthermore, post numbers have changed during the requested period, with no readily viewable cross reference between old post numbers and existing post numbers.
26. Nor could the existing HR computer system produce 'change' reports which could show when post holders changed in a post.
27. Merseyside Police said it would be possible to run off an electronic report that would show snap shots of who was in post at any given date. However, to do this conclusively, reports would have to be run off for at least each week to detect when a change has taken place. Therefore, eight years of one report per week would mean 416 reports would have to be run off. Merseyside Police estimated that to retrieve that information and then manually extract the data identifying changes in staff would take about five minutes per report, or 34 hours. This method would significantly exceed the appropriate limit of 18 hours.
28. Merseyside Police said it could run of a series of reports to arrive at an approximate turnover number in response to the request:
 - A 'leavers' report (which shows leavers since 2006) but this would only shows persons vacating a specified post when they leave the organisation. They would not show persons who vacated a specified post to continue working for the Force in another post.
 - Re-deployment report data as far back as 2009 and 'new starter' data as far back as 2007 (new starters are persons completely new to the organisation).

- Its recruitment system is also capable of showing which posts were advertised going back to 2009 (therefore not 8 years). However the data would not show whether the post was filled as a result of that advertisement. Furthermore, it would not show redeployment data.
29. It could then analyse and cross match the output from these reports to arrive at a turnover figure for the posts in question. However, due to the limitations set out above, it could not guarantee that this would give an accurate figure in response to the request.
 30. In any case, it believed that such an action constituted the creation of new information with which to answer the request, which it was not obliged by the FOIA to do.
 31. In conclusion Merseyside Police believed that the only way to accurately provide the turnover data for the period specified in the request would be to interrogate each HR file. It was therefore Merseyside Police's contention that to arrive at an accurate figure would exceed the appropriate limit under section 12.

Conclusion

32. When dealing with a complaint to her under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
33. The complainant has said that representatives of Merseyside Police have made comments to her about the level of turnover for the department in question which suggest they "know" the figure, and therefore that it cannot be difficult to determine. In response to this, the Commissioner considers that there is a difference in quality between anecdotal evidence (information which may be broadly and informally held to be true to a group of people by virtue of their work in a particular area) and a formal response to an FOIA request, which is a request for recorded information held by a public authority.
34. The Commissioner has considered Merseyside Police's estimate and is satisfied that it is reasonable. Merseyside Police has demonstrated that its HR records are held in such a way that it is not a straightforward exercise to recover the information the complainant has asked for. There are a considerable number of searches involved and the time that

would be needed to undertake them is significant to the extent that the appropriate limit would be exceeded. Furthermore, she agrees that the cross-matching and subsequent interrogation and analysis of information from disparate databases clearly constitutes the creation of new information with which to answer the request, which goes beyond what is required of public authorities when answering requests². For these reasons the Commissioner has determined that section 12(1) has been correctly applied to the request.

35. The Commissioner has decided that Merseyside Police does not have to comply with the request by virtue of its reliance on section 12(1). Therefore the Commissioner has not gone on to consider whether the section 40(2) exemption might also apply.

Section 16 – advice and assistance

36. Section 16(1) of the FOIA provides that a public authority should to provide advice and assistance to any individual making an information request, so far as it would be reasonable to do so. 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.
37. In this case, Merseyside Police did not introduce its reliance on section 12 to refuse to comply with the request until the Commissioner's investigation, and so the question of its compliance with section 16 has not been considered in this decision notice.

Other matters

38. The complainant may wish to submit a refined request which Merseyside Police can comply with within the costs limits. Any such request should be specific about the time period under consideration and if necessary Merseyside Police should provide advice and assistance with regard to what timescales could be covered by a search of the computerised HR system.
39. The Commissioner would also comment that any request for information which specifies named members of staff would be likely to engage the exemption under section 40(2) in respect of personal data, and
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² https://ico.org.uk/media/for-organisations/documents/1159/information_from_original_sources.pdf

considerations as to whether disclosure of the information under the FOIA would be fair to the data subjects.

Right of appeal

40. 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

41. 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.
42. 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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