

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 July 2017

**Public Authority:** Chief Constable of West Yorkshire Police  
**Address:** PO Box 9  
Laburnum Road  
Wakefield  
WF1 3QP

### Decision (including any steps ordered)

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1. The complainant has requested information about the number of 'informal' staff complaints/grievances raised in a specific department from West Yorkshire Police ("WYP"). WYP provided some information but advised that to provide the remainder would exceed the appropriate limit at section 12(1) of the FOIA. The Commissioner's decision is that WYP has correctly applied section 12(1) of the FOIA; however, she finds a breach of section 10(1) (time for compliance) as well as a breach of section 16(1) in that it failed to provide adequate advice and assistance. No steps are required.

### Request and response

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2. Following an earlier request, on 14 June 2016 the complainant submitted a request to WYP as follows:

*"For each year (calendar or fiscal) from 2011 to date, I would respectfully ask you to provide me with the following information:*

*1. How many days' absences were recorded for IM [Information Management] staff in relation to Stress/Depression?*

*2. What percentage of the IM workforce (i.e. as a percentage of the total number listed as having worked in IM during the period requested) has had at least one absence recorded due to Stress/Depression?*

*3. How does this compare with the percentage for West Yorkshire Police as a whole during the same period?*

*4. How many complaints/grievances have been raised by staff within Data Protection, Freedom of Information and DBS [Disclosure Barring Service], in relation to colleagues within the department since January 2013 to date? I require the number of complaints/grievances, not the number of people submitting them. I would like this figure to include, where possible, incidences where concerns were raised to managers which they (the managers) chose not to record officially, but deal with as something the management wished to resolve within the department (i.e. without referring to HR)".*

3. On 21 June 2016, WYP requested clarification from the complainant as it believed that compliance with part (4) of the request may exceed the appropriate limit. The complainant responded on the same day as follows:

*"Would it make it easier to restrict the answer to Question 4 to the period since January 2014? I am sure that the managers within the department would (and certainly should) be able to provide you with numbers of complaints/grievances during that time.*

*In another attempt to simplify things and make a response easier to collate, I am willing to refine my definition to cases where a member of staff has indicated to a member of management that they wish to record a grievance or complaint against a colleague within the department (i.e. "I want to make a complaint or grievance against X").*

*You can disregard whether or not it was dealt with officially (by HR) or at local level. I am mainly interested in the number of complaints.*

*For the avoidance of doubt, I define the members of management who should be able to supply you with the relevant data as the following: [6 names redacted]"*.

4. Having written to the complainant on a number of occasions delaying its response, WYP eventually responded on 4 January 2017. It provided some information in respect of parts (1) to (3) of the request and explained that it had been necessary to undertake some additional work in order to provide this information and that this was the cause of the delay. It refused to provide the information requested at part (4), advising that to do so would exceed the cost limit. It provided some information that it thought may be of interest and invited the complainant to ring and discuss the case if he was dissatisfied.

5. Following an internal review WYP wrote to the complainant on 31 January 2017. It maintained its position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 10 February 2017 to complain about the way his request for information had been handled. He asked her to consider the cost limit and also some issues he had with the handling of his request.
7. The Commissioner will consider the cost limit below. She will comment on the other concerns in "Other matters" at the end of this notice where appropriate to do so.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds appropriate limit**

8. Section 12(1) of the FOIA provides that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
9. 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.
10. 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.

***Is section 12(1) engaged?***

11. In corresponding with the complainant, WYP advised him that it was unable to provide the requested information because it was not in an easily retrievable format. It explained that its staff resolution policy has a principle of taking 'informal' action to resolve matters where possible and that there is no requirement to record such action. It added:

*"Therefore any notes relating to informal resolutions may be contained in a variety of places, including but not limited to - emails, note-books, diaries, Personal Development Records etc. and is likely to differ depending on the circumstances of the grievance and many such grievances may not be recorded at all".*

12. When asking for an internal review the complainant said he was unhappy with the response to part (4) of his request, particularly in respect of the "*interminable wait*" he had been put through and the lengths he had gone to in refining his request believing he had done so:

*"... in such a way that it would be possible for you to provide at least a minimum figure, limiting the parameters to a manageable number of staff and providing the names of 6 members of management who should be able to provide a number for any complaints made to them, whether there was an official requirement to log such cases or not".*

13. In his opinion such information should have been readily available and the managers named should at least have emails recording such matters.

14. In its response to his concerns WYP explained:

*"There is no standardised method (or policy requirement) for recording informal complaints/grievances accordingly any search would lead to incomplete information being retrieved.*

*A full response to Question 4 was not provided as WYP were unable to provide the information without searching in day books, emails, note-books, diaries, Personal Development Records, PEN [Performance Examples Notebook] of the relevant managers which would have taken significantly longer than 18 hours".*

15. In response to the Commissioner's enquiries WYP provided a more detailed breakdown of the costing exercise it had undertaken – which the Commissioner considers could have been useful to the complainant in assisting him to refine or focus his own request.
16. Again it explained that there was no requirement for it to record the information requested and, because the information related to "*informal*

*matters", it could be held in a variety of places. It advised that the managers had confirmed that information may be held but had said that to locate it would require: "a search of a number of books, diaries, emails, files, databases & documents etc".*

17. WYP also advised the Commissioner that it had undertaken a sampling exercise and four of the managers were approached. It had determined anticipated costs as follows:

*"Day books / Diaries*

*Calculation of 3 managers to find information in day books / diaries equated to*

*2.5 books @ 1 hr per book                      2.5 hrs*

*14 books @ 0.5 hr per book                      7.hrs*

*31.25 books @1 hr per book                      31.25 hrs*

*Total 40.75 hrs*

*Calculation of 1 manger [sic] to find information in:*

*Emails – 3890 with an average of 30 seconds to open and establish if it related to a complaint would take a total time of 32hrs 20 mins*

*Calendar entries – 895 days between the dates of the request at a total of 10 seconds per day to check calendar entry to establish if it related to complaint/grievance would equate to 2.25 hrs*

*One Note (a digital notebook used instead of day book / diary or as a repository)*

*Approx 26 sections each containing a number of different pages. A rough estimation of 100 pages at 2mins per page would give a total of 200 mins or 3 pages a total time of 3 hours*

*It would be reasonable to assume that the times taken for the further 3 managers would be similar or greater due to the roles they hold within the department.*

*The sampling exercise did not include searches for emails / one note / documents for the 3 managers who scoped the day books / diaries.*

*Our final calculation was for an approx. timescale of 19 hrs per manager which would equate to 133 hours.*

*Adjusting the timescale to 30 mins per book and reducing the number of day books would not bring the total within the 18 hour timescale.*

*The original request was for complaints / grievance raised by staff within Data Protection, Freedom of Information and DBS. The clarification did not simplify the request as the managers identified also oversee other areas of work within Information Management and all the staff within those areas. To locate the information requested would involve a search all information held for all areas which in respect of the senior managers named would involve the whole department of Information Management”.*

18. In responding to further questions from the Commissioner about the daybooks, WYP advised:

*“... these are A4 books which have 96 sheets (2 pages per sheet.) The calculations were given by individuals concerned by a dip sample. (The difference would be down to their roles & responsibilities and content in the day books. The more HR/staffing you deal with the more you will need to read each input in your book/emails. If you deal with more strategic elements of the department, you may be able to discount content/emails quicker as not relevant to the request)”.*

19. The Commissioner has considered WYP’s submissions and recognises that the information sought in part (4) of the request is not held in any specific location and would require collation from a variety of different sources for each manager named, each manager using different methods. Furthermore, the ‘complaint’ may have been raised in a variety of ways such as an email, meeting, conversation or phone call. It may therefore, if recorded at all, be in any of a number of locations.

Also noting that the request specifies figures for staff only within “Data Protection, Freedom of Information and DBS”, the Commissioner asked WYP to explain the roles of the named managers within the Information Management Department (“IMD”) which covers these sections. She was advised that none of the six managers were exclusively responsible for these groups of staff and each undertook much wider roles. For example, the head of the IMD is named in the request and she is ultimately responsible for all IMD staff. In June 2016, at the time of the request, the list of staff she was responsible for was as follows:

*“Any staff are able to by-pass a supervisor or manager and go see the department head, who has an open door policy...”*

*The Disclosure unit was up to its full capacity of 16 Full time equivalent (FTE) (not including leavers and new starters)*

*DBS – In 2016 this had 3.65 FTE supervisors, 17.40 DBS Disclosure Officers, 16.68 DBS Disclosure Assistants*

*Data Management Unit – 2 Senior Data management officers, 2.5 x Supervisors, 20.64 FTE DM Assistants & 13 FTE DM Officers*

*Weeding team – In 2016 the weeding team had grown to 17 Full time equivalent staff”.*

20. These numbers were given for June 2016 and only relate to numbers of staff. As the posts are not all full time individuals there will be more staff than the 108 roles identified above. There will also have been some staff turnover during the 18 month period covered by the request. Furthermore, whilst the complainant only asks for issues raised by Data Protection, Freedom of Information and DBS staff, the Commissioner has been advised that staff are not exclusively allocated to data protection work and that data protection matters can be dealt with by other members of IMD staff.
21. In view of the volume of staff she is responsible for, the Head of IMD would therefore potentially hold a considerable amount of information which she would need to consider before narrowing it down to the staff working only in the sections named, where this is possible.
22. As a further example, WYP advised that one of the named managers is an Inspector. It explained that he:  
  
*“... provided support to projects within the IM department which involved all the department/staff. He also for a significant period of time over saw the Disclosure Unit as a second line manager. As well as these roles he also is a serving Police Inspector and continued to provide Gold support for Football matches and other Policing functions. Which whilst does not impact on the request, does impact on the volume of information he would need to review to locate if he held any relevant information”.*
23. A Principal Disclosure Officer is also named and WYP explained that she ‘acts up’ into a Senior Leadership Team [SLT] lead role dealing with issues flagged up at this level. As well as overseeing the Disclosure Unit, Information Security, Information Sharing and DBS, she oversees the Data Management Unit and the Weeding Review Team. The other staff named also have roles which do not exclusively cover Data Protection, Freedom of Information or DBS staff.
24. Basing her calculations only on searching the daybooks held by the four managers as provided above, it is apparent to the Commissioner that there are at least 47 of these books and that each book contains 192 sides of paper. Estimating 5 seconds per side to read and ascertain whether anything relevant is recorded on that page would equate to

approximately 30 minutes to check each book. As there are already 47 books identified it would take over 23 hours just to look through these, without searching in any similar books which the other managers may hold; this is also prior to considering any emails or any other potential locations where information may be recorded.

25. The Commissioner is not convinced that the estimates regarding the time it would take to look at emails is reasonable as she does not accept that it would take 30 seconds to look at an email and ascertain whether or not it recorded some sort of informal complaint or grievance. However, the time it would take to go through the daybooks is, in her view, reasonable. This means that the task of reviewing the daybooks alone would exceed the appropriate limit.
26. The estimated total time is therefore significantly in excess of the 18 hour limit provided by the FOIA, and there is no evidence available to the Commissioner that indicates WYP's calculations are in error or otherwise invalid. On this basis the Commissioner is satisfied that WYP has correctly applied section 12(1) in this case.

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

27. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the Section 45 Code of Practice<sup>1</sup> (“the Code”) issued by the Secretary of State, it will have complied with section 16(1).
28. The Code advises that, where an authority is not obliged to comply with a request for information because, under section 12(1) and the Regulations made for that section, the cost of complying would exceed the appropriate limit, it should provide the requestor with reasonable advice and assistance.
29. The Commissioner's guidance states<sup>2</sup> that the minimum a public authority should do in order to satisfy section 16(1) is to indicate if it is able to provide any information at all within the appropriate limit. Communicating this to a complainant may avoid further and futile attempts to refine the request to bring it under the appropriate limit. If the requestor understands the way in which the estimate has been

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf)

<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)



calculated and why their request would exceed the appropriate limit, this should help them decide what to do next.

30. Whilst the Commissioner notes that WYP did try to assist the complainant, had it provided him with the more substantive estimate of costs that it gave her then this would have been of greater assistance. For example, the complainant was clearly unhappy that WYP advised him that in trying to narrow his request he had actually made it greater. However, if it had explained that this was because the named managers had responsibilities which are in addition to the sections which he sought information about then this may have clarified matters for him. Furthermore, a breakdown of the locations where information may be held could have allowed him to focus on specific areas such as emails only.
31. The Commissioner therefore finds that WYP breached section 16 as it failed to provide adequate advice and assistance. However, she does not require any steps as a result of the information provided in this notice, but she notes that the complainant may now wish to submit a further request now he has more details.

### **Section 10 - time for compliance**

32. The complainant provided a clarified request to WYP on 21 June 2016 but did not receive a substantive response to his request until 4 January 2017. Whilst the Commissioner understands that there was interim correspondence, and that WYP says it was undertaking work in order to comply with the request, such a delay is in breach of section 10 of the FOIA.

### **Other matters**

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33. The Commissioner notes the complainant's frustration in trying to limit his request and his disappointment about how such information is stored within WYP. Whilst WYP may be dealing with informal complaints/grievances in line with its own policies and procedures, and this allows for no standardised method for recording such matters, she has concerns about this being poor practice with regard to records management. Such practices will potentially have an impact on the parties raising these matters if records of them are subsequently not able to be found and there is therefore no 'evidence' of them having been spoken of at all.

34. The Commissioner has produced guidance in connection with the section 46 code of practice<sup>3</sup> for records management. This provides guidance to public authorities in connection with the keeping, management and destruction of their records, and sets out recommended, rather than mandatory, good practice. Within her guidance the Commissioner determines that public authorities should have in place systems that enable records to be stored and retrieved as necessary and also that they know what records are held, where they are and ensure that they remain useable.
35. In line with her guidance, the Commissioner would recommend that WYP considers how such matters are recorded with a view to ensuring such information is retrievable and useable in the future.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1624142/section-46-code-of-practice-records-management-foia-and-eir.pdf>

## Right of appeal

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36. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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** .....

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**