

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 August 2017

Public Authority: Chief Constable of West Midlands Police

Address: Police Headquarters

Lloyd House

Colmore Circus

Birmingham

B4 6NQ

Decision (including any steps ordered)

1. The complainant has requested information about West Midlands Police's arrangements for investigating fraud and economic crime. West Midlands Police cited section 12(1) (cost of compliance) of the FOIA to refuse to comply with the request.
2. The Commissioner's decision is that West Midlands Police was entitled to rely on section 12(1) to refuse to comply with the request and that it discharged its obligations under section 16(1) (advice and assistance).
3. The Commissioner requires no steps to be taken.

Request and response

4. On 17 January 2017, the complainant wrote to West Midlands Police ("WMP") and requested information in the following terms:

"Q1. Do you have a specialist investigative unit dedicated to fraud/economic crime?"

If yes, could you answer the following?

Q2. What is the name of this unit and when was it set up?"

Q3. How many police officers does this unit employ (full-time equivalents) and what are their ranks? Please provide a framework map if available.

Q4. How many civilian investigators does this unit employ (full-time equivalents)?

Q5. If possible can you also provide details for how they have been employed by the economic crime unit for all the years 2010 - 2016?

Q6. How many investigations has the economic crime unit carried out in these years 2010 - 2016?

Q7. If available please supply list of the different types of crimes investigated by the economic crime unit, including the numbers of each crime investigated.

Q8. If available please supply the same figures for all the years 2010 - 2016.

Q9. How many of these cases led to prosecutions and how many prosecutions were successful? Please also provide as percentages.

Q10. Were any prosecutions or trials abandoned owing to investigative failings or failings on behalf of the Crown? Please also provide as percentages.

Q11. How many convictions have been appealed or are in the process of appeal? Please also provide as percentages.

Q12. Have any of those employed, now or previously, in the economic crime unit ever been investigated for misconduct?

Q13. Have any of those employed in the economic crime unit, now or previously, had a criminal record?

Q14. What is the annual budget of the economic crime unit?

Q15. Please provide details of the annual budgets for each of the years 2010 - 2016 and details of the actual expenditure occurred in those years?"

5. WMP responded on 10 February 2017. It said that the request was very broad and that its data was not organised in such a way as to allow it to comply with the request within the appropriate limit set out under section 12(1) of the FOIA ("the costs limit"). In an attempt to provide assistance to the complainant, it proposed refining the scope of the request so that it might fall within the costs limit, and described how this might be done.

6. In an email dated 14 February 2017, the complainant agreed to reduce the scope of the request, but asked that WMP include questions 6 and 7 within the refined scope.
7. WMP responded on 15 February 2017, explaining that the request could not be taken forward on those terms, as checking how many frauds the economic crime unit ("ECU") had investigated would itself exceed the appropriate limit. It proposed instead considering the total number of frauds investigated by the force as a whole and asked for the complainant's confirmation to this approach.
8. The complainant responded on 16 February 2017, and expressed some scepticism at WMP's explanation of the situation. He said that he would be willing to reduce the scope of the original request to questions 2-7 and 10, together with any other additional information that could be provided within the costs limit. He asked that this be done within the following 10 days.
9. WMP responded on 1 March 2017. It said it was taking comments in the complainant's email of 14 February 2017 as being a request for an internal review. It acknowledged receipt of his email of 16 February 2017, saying it *"...may help us to offer information that will more closely fit your requirements."*
10. WMP contacted the complainant with the outcome of its internal review on 8 March 2017. It upheld its decision to apply section 12(1) of the FOIA in respect of the original request. It proposed further refinements to the scope of the request and asked the complainant to confirm that he wished to proceed on that basis, but heard nothing further from him.

Scope of the case

11. The complainant contacted the Commissioner on 1 March 2017 to complain about the way his request for information had been handled. He felt that he had been reasonable in trying to accommodate WMP's instructions to reduce the scope of the request, and that in return it had been obstructive and given him a series of conflicting responses, which had failed to result in any information being disclosed. He felt that he had no choice but to reinstate his original request in full, and asked the Commissioner to consider WMP's refusal of it under section 12(1).
12. The Commissioner has therefore considered WMP's decision to apply section 12(1) of the FOIA in respect of the request dated 17 January 2017. She has also considered its compliance with section 16(1) (advice and assistance) of the FOIA.

13. While they do not form part of this decision notice, WMP's attention is also drawn to the Commissioner's comments in the "Other matters" section, below.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

14. Section 12(1) of the FOIA 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.
15. The appropriate limit in this case is £450, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). This is calculated at the rate of £25 per hour, providing an effective time limit of 18 hours work.
16. When estimating whether complying with a request for information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in complying with the request. The estimate must be reasonable in the circumstances of the case. It is not necessary to provide a precise calculation.
17. The Fees Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
- determining whether the 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; and
 - extracting the information from a document containing it.
18. WMP explained to the Commissioner that to locate and extract the information requested in the complainant's request of 17 January 2017 would exceed the costs limit established at section 12(1) of the FOIA.
19. It said that the element of the request which repeatedly caused it to exceed the costs limit was question 6 ("*How many investigations has the economic crime unit carried out in these years 2010 - 2016?*") which had remained within the scope of the refined requests that the complainant proposed. It said that this fraud data was not recorded in such a way that it could easily be extracted in response to the complainant's request and that for it to locate and extract this item of

information alone would far exceed the 18 hour time limit provided for under the Fees Regulations.

20. WMP said that before April 2013, fraud was investigated across the force as a whole, not just by the ECU. For the years 2010-2013 there is no way to identify whether the ECU or another department investigated each fraud case other than by checking each fraud report manually.
21. As an example, it said that for the financial year 2010-11 the force handled 3164 fraud reports. It would be necessary to locate and then manually check each individual report to establish whether the ECU or another department was allocated it. Allowing for one minute per report to conduct each check, it would take approximately 52 hours to establish, for 2010-11 alone, whether or not the ECU had investigated each report. It said there was no other way to obtain this data.
22. WMP was therefore satisfied that complying with question 6 alone, would exceed the costs limit established under section 12(1) of the FOIA.

Conclusion

23. The Commissioner has considered the arguments submitted by WMP. She is satisfied that because of the way it recorded fraud reports prior to April 2013, it is not possible to determine whether or not a report of fraud was investigated by the ECU without checking each individual report. It is therefore necessary to consider the time that this might take to do.
24. Having considered the information provided by WMP, the Commissioner is satisfied that an estimate of one minute to examine each record of a fraud report, to establish whether or not it was investigated by the ECU, is a reasonable estimate. The estimate allows for the fact that some records may be extracted and examined in a much shorter time, while it may take longer to establish the investigating department in other cases. It should be noted that even if the estimate was reduced to an average of just 30 seconds, the overall work involved would still exceed the appropriate limit by some margin, and also that WMP's estimate was confined to a sampling of a single year, and not the six years covered by the request.
25. Taking the above into account, the Commissioner has concluded that compliance with the request dated 17 January 2017 would exceed the costs limit. It follows that WMP was entitled to rely on section 12(1) to refuse to comply with the request.

Section 16 – advice and assistance

26. Section 16(1) of the FOIA states that a public authority should provide advice and assistance to those who have made, or propose to make, requests for information, so far as it would be reasonable to do so.
27. The Commissioner's guidance on advice and assistance¹ states that public authorities should provide advice and assistance to applicants to help them narrow responses which exceed the costs limit. It clarifies that the purpose of section 16 is to ensure that a public authority communicates with an applicant to find out what information they want and how they can obtain it.
28. When refusing the request on 10 February 2017, WMP made a proposal as to how the request as a whole might be refined so as to fall within the costs limit. The complainant asked for two further questions to be included within the scope of WMP's proposed revisions, including the number of investigations the ECU had carried out between 2010 - 2016.
29. In its response, on 15 February 2017, WMP wrote to the complainant:

"I have checked with the ECU and the way that it works is that they receive all frauds reported to Action Fraud, but those are then allocated to either their own staff or, under certain circumstances, to the relevant Neighbourhood Policing Unit. To identify how many of the reported crimes ECU investigated would be beyond the 18 hours.

However they suggest that we could get the data, from our central crime statistics department, which would represent all of the Fraud offences recorded by West Midlands Police.

Please let me know whether this would satisfy your request and then we can proceed on that basis".
30. WMP established at the outset that identifying the number of investigations the ECU had carried out between 2010–2016 would cause the request to exceed the costs limit. The Commissioner considers that the explanation it gave on 15 February 2017 addressed this point sufficiently for the complainant to be in a position to refocus his request. When considered in conjunction with the advice it gave in its refusal notice of 10 February 2017, the Commissioner is satisfied that WMP discharged its obligations under section 16 of the FOIA.

¹ <https://ico.org.uk/media/for-organisations/documents/1624140/duty-to-provide-advice-and-assistance-foia-section-16.pdf>

Other matters

New request for information

31. WMP proposed further, particular refinements to the request on 30 June 2017. In response, in an email dated 20 July 2017, the complainant said *"... Please provide me with whatever information you are prepared to release"*.
32. The Commissioner considers that the complainant's email of 20 July 2017 constituted assent to WMP processing the refined request set out in its email of 30 June 2017.
33. Paragraph 64 of the Commissioner's guidance on requests where the cost of compliance exceeds the appropriate limit² clarifies that a refined request should be treated as being a new request for information.
34. WMP should therefore treat the refined request set out in its email of 30 June 2017 as a new request for information.

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Right of appeal

35. 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

36. 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.
37. 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

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