

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 February 2019

**Public Authority:** Chief Constable of Essex Police  
**Address:** Essex Police Headquarters  
PO Box 2  
Springfield  
Chelmsford  
Essex  
CM2 6DA

### Decision (including any steps ordered)

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1. The complainant has requested details of correspondence that Essex Police ("EP") has had with a named organisation. EP advised that to ascertain whether or not it held any information would exceed the cost limit at section 12(2) (cost of compliance exceeds appropriate limit) of the FOIA. The Commissioner's decision is that EP was entitled to rely on section 12(2) of the FOIA. No steps are required.

### Background

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2. The request refers to an organisation called the Campaign Against Antisemitism. According to its website<sup>1</sup>:

*"Campaign Against Antisemitism consists of eight directorates which collaborate closely to expose and counter antisemitism through education and zero-tolerance enforcement of the law".*

3. The complainant has made a further request since making this request to EP and the Commissioner is currently investigating a complaint in
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<sup>1</sup> <https://antisemitism.uk/about/>

connection with that request too. EP has not cited the cost limit in respect of the later, more specific request.

## Request and response

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4. On 10 February 2018 the complainant wrote to EP and requested information in the following terms:

*"I wish to see all correspondence between Essex Police and the Campaign Against Antisemitism".*

5. EP responded on 8 March 2018 and refused to confirm or deny holding the requested information, advising that to do so would exceed the cost limit at section 12(2) of the FOIA. When doing so it suggested that, if he could provide further details to try and refine the request such as specific departments, names or a shorter timeline, it may be able to assist.

6. In disagreeing with this position, on 8 March 2018 the complainant argued:

*"So how come the same request was made to Derby police and they produced the documents?"*

*You mean you don't have a system of finding information digitally on a person, organisation or subject? That is crazy and hard to believe.*

*I can put key words into my emails and find every one relating to those words in seconds.*

*Do you have a department that deals with allegations of racism and 'anti-Semitism'? That is where the correspondence would most likely be".*

7. On 14 June 2018 he wrote again saying:

*"How come Norwich and Derby police can produce FOI request documents of the same kind that I have requested from you and yet you can't. Or rather won't?"*

8. Following an internal review, EP wrote to the complainant on 3 August 2018. It revised its position, citing section 12(1) of the FOIA rather than 12(2). It explained:

*"Please note that Essex Police does have a dedicated Hate Crime unit and if you have any specific requests regarding held information or Offences of Hate, enquiries can be made. Please note*

*Essex police operate according to national operational guidance which employs perception based recording.*

*This is possibly more effective as those targeted for abuse or harassment do not have to provide evidence to fit any definition if they perceive they were targeted because of any protected characteristic for example Race/Religion\* the force will record as a hate crime.*

*(\* it is settled case law that Jewish is a racial group and also a religion so the force could record against either protected characteristic or both dependent on the perceptions of the victim or/witnesses/third parties or even the attending officers).*

*Essex Police trust the information and guidance provided above is helpful. Please submit a refined request if you wish to continue with enquiries regarding antisemitism."*

9. During the Commissioner's investigation EP confirmed that its internal review was incorrect and that it should have stated that it was maintaining reliance on section 12(2) of the FOIA.

### **Scope of the case**

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10. The complainant initially contacted the Commissioner on 10 July 2018 to complain about the way his request had been handled. He did not provide all of the necessary documentation and was asked to do so.
11. The complainant wrote to the Commissioner again on 5 November 2018 and the Commissioner again required further information. The necessary information was provided on 7 November 2018.
12. Within his grounds of complaint the complainant has stated: "*A request made by another party with whom I have no connection to Derbyshire Police was met with a very different response and the requested information was forthcoming*". The Commissioner has viewed the corresponding weblink which has been put online by the complainant, and notes that that request was made to a Police and Crime Commissioner which is a considerably smaller organisation than a police force (on their website it can be seen that they currently employ 19 staff) and it was also for very specific information. Irrespectively, she considers that such a disclosure does not set a precedent for other requests being dealt with by a different public authority. Requests are considered on a case-by-case basis and different public authorities have many different systems, different criteria for storing their information and will obviously hold different information for different purposes.

## Reasons for decision

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

13. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
14. The appropriate limit is set at £450 for EP by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
15. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours, and specify the tasks that can be taken into account when forming a cost estimate as follows:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
16. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by EP was reasonable. If it was, then section 12(2) was engaged and EP was not obliged to confirm or deny whether the requested information was held.
17. In its refusal notice EP explained to the complainant:

*"In this instance, to determine whether or not Essex Police even holds the information as specified in your request would require the manual examination of a very high number of emails between officers and maybe joint mailboxes to ascertain if we even hold information in respect of your request. Such an exercise would extend beyond the reasonable amount of time that a public authority is required to expend in responding to a request ..."*
18. By way of advice and assistance it suggested that it may be able to deal with the request if he: "... could provide further details to try and refine the request to a more manageable task, such as specific departments or names that you are interested in with a shorter timeline".
19. At internal review EP explained:

*"As per our previous response, Essex Police has a number of departments within the police force and a large workforce. There is no obligation nor easy capability for the force to perform a keyword search over the email system as a whole. To perform such a broad search would, if able to be completed, be inaccurate and misleading and would not capture all the data requested."*

*Searches undertaken by EP*

20. The Commissioner raised enquiries with EP regarding any searches it had undertaken to try and comply with the request and it advised her as follows:

*"After enquiries within the force to the IT Services department I can confirm the following.*

*A search has been performed on the Microsoft Exchange Server for the following terms:*

*a) 'Campaign against anti-Semitism'*

*b) 'Campaign'*

*c) 'Anti-semitism'*

*d) 'info@civilsociety.co.uk' - (this has been obtained from an open source search and not provided by the applicant)*

*For each of these respectively, the sever [sic] which includes both Essex and Kent email addresses returned:*

*a) 23,431 hits*

*b) Approx. 28,000 hits*

*c) Approx 28,000 hits*

*d) 2 hits*

*The compressed size, for example, of a) on the Journal Servers was 5.94Gb (or 6.58Gb uncompressed). This brings back each surviving individual email containing that term and a manual review of each would need to be made to establish the following:*

- if the email involved Essex Police (as the IT infrastructure is shared with Kent Police),*
- if the email was correspondence between Essex and the Campaign Against Antisemitism, as the search has returned all*

*emails with the phrase from either the header, body or signature of the email.*

- *To exclude any internal emails which may include this phrase.*

*To perform this task would take 1,171 hours based on a 3 minute review time for each email. If we were to go through b), c) and d) the time would be even greater.*

*This search only searches the email system. Other information is held on local hard drives and shared servers. These can be searched but the likely hits would be very large too and would require extensive manual filtering. At the moment data searches can be performed on the data servers however current searches have been running for over 6 months so therefore this is not a reasonable option.*

*In addition to the above, I have also made further enquiries with our Record Centre in relation to any correspondence in non-electronic form and the following difficulties have been explained to me by staff working there as follows:*

- *The time frame would depend upon the information we are given to search with.*
- *We would initially search DB text for - **Campaign Against Antisemitism** – to see if anything had been recorded under this heading (I have done this and there is nothing recorded). I have also searched our email boxes, and can find no trace of any correspondence with this organisation.*
- *If a hard copy item had been placed within a crime report, we would be unable to locate it without the crime number, or we would need enough information to be able to identify the report, such as a victim, defendant, address, and or offence. We would research this on the legacy systems and Athena, and once the crime had been identified, would look it up on DB text to find out if it had been filed, and where it was located.*
- *If the item had been placed in a box for storage by another department, for example in the form of a letter or a hard copy print of an email, unless the item had been clearly recorded on the index sheet, we would be unable to find it”.*

#### *The Commissioner's view*

21. The Commissioner initially notes that the request is 'open-ended', ie there is no time frame specified, so this would require EP to search **all** records that it holds in order to try and locate any correspondence it has

had with the organisation Campaign Against Antisemitism. As the request refers to **all** correspondence this also means that this may be an electronic email or a paper letter, going back as far as records are held by EP. Furthermore, the complainant has not suggested any particular subject matter that he is interested in so it is not clear where any search should commence.

22. Whilst the complainant's request for internal review directs EP to "*a department that deals with allegations of racism and 'anti-Semitism'*" this only suggests where information might be held and not what he is actually looking for. In response to this, EP has explained to him that it does have a Hate Crime Unit and suggested that he could submit a specific request regarding information which may be held in that Unit if he wished to do so; the Commissioner has no evidence to suggest that he did.
23. Having considered the estimate above, the Commissioner considers this estimate to be a reasonable one. The Commissioner therefore concludes that section 12(2) is engaged and EP was not obliged to confirm or deny holding any of this information. Furthermore, she again notes that a subsequent refined request has resulted in a different response from EP where it is no longer citing the cost limit.

### **Section 16 – advice and assistance**

24. 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 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.
25. In this case EP has explained to the complainant about how the information is held and why confirmation or denial would exceed the limit. It also suggested ways in which he may narrow his request, which he has since done. The Commissioner is therefore satisfied that EP complied with the requirements of section 16.

### **Other matters**

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26. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

*Internal review*

27. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
28. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases, which this request was not. The Commissioner is therefore concerned that it took in excess of 20 working days for EP to conduct an internal review in this case.
29. The Commissioner would like to remind EP that she routinely monitors the performance of public authorities and their compliance with the legislation. Records of procedural breaches are retained to assist the Commissioner with this process and further remedial work may be required in the future should any patterns of non-compliance emerge.



## Right of appeal

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30. 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)

31. 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.
32. 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**