

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 September 2019

Public Authority: Police, Fire & Crime Commissioner for Staffordshire

Address: Staffordshire Commissioners Office
Ground Floor Block 9
Weston Road
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant has requested information regarding recent tenders in relation to domestic abuse support services. The Police, Fire & Crime Commissioner for Staffordshire withheld the information, citing section 12(1) (Exceeding the cost limit) of the FOIA.
2. The Commissioner's decision is that the Police, Fire & Crime Commissioner for Staffordshire has applied section 12(1) of the FOIA appropriately. However, she considers that the Police, Fire & Crime Commissioner for Staffordshire has breached sections 10 (Time for compliance) and 17 (Refusal of a request) of the FOIA
3. The Commissioner does not require the Police, Fire & Crime Commissioner for Staffordshire to take any steps as a result of this decision.

Request and response

4. The Police, Fire & Crime Commissioner for Staffordshire used to be known as the Office for Police and Crime Commissioner for Staffordshire.

5. On 3 September 2018, the complainant wrote to the Police, Fire & Crime Commissioner for Staffordshire (the PFCC) in the following terms:

"All information relating to the assessment and scoring of the recent tenders for provision of domestic abuse support services. Including the names, organisations and individual scores of each assessor, broken down by each bidder and under each question of the tender. Information about any weighting of questions.

All information relating to any moderation process and the final recommendation made to the PCC by the assessment panel.

Any other information considered by the PCC in making the decision.

All communication between OPCC staff and the PCC, or vice versa, regarding the tender, that occurred after the submission deadline.

Details of all meetings and communications that the PCC or any senior managers at the OPCC have had with any senior managers or trustees of victim support in the last 2 years.

Details of any meetings or communications that the PCC or OPCC has had with PCCs or their offices, from elsewhere in England, or with the national association of PCCs regarding victim support or it's [sic] services in England."

6. The PFCC responded on 9 October 2018. It refused to provide the requested information, citing sections 12(2) (Exceeding the cost limit) of the FOIA to some of the information and 43(2) (Commercial interests) of the FOIA to the remainder.
7. In his request for an internal review of 9 October 2018, the complainant explained that he expected the PFCC to carry out a search using the search term: 'victim support'.
8. Following an internal review the PFCC wrote to the complainant on 8 November 2018. It explained that in relation to section 12, it should have cited section 12(1) instead of 12(2) and upheld its application of section 43(2). It also provided him with some information relating to the tendering process.

Scope of the case

9. The complainant contacted the Commissioner on 18 December 2018 to complain about the way his request for information had been handled. He explained that the information he was seeking regarding communications could be fulfilled to some extent as it was not onerous to search email systems for email communication. The complainant also confirmed that the information he was seeking regarding the tendering exercise concerned the scoring and assessment process.
10. The complainant also explained that as he was not seeking the content of tenders, he did not understand how any of the requested information could be considered as commercially sensitive.
11. During the Commissioner's investigation, the PFCC disclosed some information to the complainant. The Commissioner contacted him about this; the complainant confirmed that the information did not satisfy his request.
12. There was also some confusion as in the request, the complainant referred to "*All information relating to the assessment and scoring of the recent tenders for provision of domestic abuse support services.*" However, during the Commissioner's investigation, the complainant confirmed that there was only one relevant tender. The Commissioner asked him to confirm which tender he considered it was. The complainant explained that the PFCC knew which one he meant.
13. The Commissioner asked the PFCC about this. It explained that, given that the complainant had confirmed that he was requesting information about one tender, it had been able to identify which one it was. It also explained that it considered that section 12(1) still applied and the reasoning it had provided to the Commissioner applied to the specific tender in question.
14. The PFCC also informed the Commissioner and the complainant that it was only relying on section 12(1), therefore the Commissioner will not consider section 43(2) any further.
15. The Commissioner will consider the PFCC's application of section 12(1) and how it dealt with the request under the FOIA.

Reasons for decision

Section 12: Cost of compliance exceeds appropriate limit

16. Section 12(1) of FOIA states that a public authority does not have to comply with a request for information if it estimates that the cost of compliance would exceed the appropriate cost limit.
17. This limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) as £600 for central government departments and £450 for all other public authorities. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government, legislative bodies and the armed forces and 18 hours work for all other public authorities. In the present case the appropriate time limit is 18 hours.
18. The 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.
19. Section 12 provides that public authorities are only required to estimate the cost of compliance with a request. The Commissioner considers that the estimate must be reasonable and has followed the approach set out by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/004, 30 October 2007) which states that a reasonable estimate is one that is "*sensible, realistic and supported by cogent evidence*".
20. Section 12(1) requires a public authority to estimate the cost of complying with the request, rather than provide an exact calculation.
21. The Commissioner must therefore consider whether the cost estimate provided by the PFCC is reasonable. If it is, then section 12(1) is engaged and the PFCC is not obliged to comply with the request.

Aggregation of requests

22. Multiple requests within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case this means that there are six requests to be considered. If they relate to the same overarching theme, public authorities can aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.

23. In the Commissioner's guidance¹ on exceeding the cost limits, she explains that:

'Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested'.

24. The Fees Regulations wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
25. Although the PFCC did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there is an overarching theme. This is because the six requests are for information about a tender for the provision of domestic abuse support services.

Would compliance with the request exceed the cost limit?

26. The PFCC explained to the Commissioner that it would need to establish which data/documents related to the assessment and scoring of recent tenders for provision of domestic abuse services or anything attributed to the process. It explained that this meant that the one I.T. system that draws numerous systems together and contains millions of records, would need to be searched to ensure that all requested data was captured from various locations. The PFCC also confirmed that it had conducted a search, which had taken 30 minutes, to identify the number of files it would need to search, using the search term 'tender process for domestic abuse support services'. It explained that it would have to search 4,575 files and 9,695 emails and provided the following breakdown:

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

- Outlook – 5 minutes per email: this would equate to $9,695 \times 5$ minutes = 48,475 minutes.
27. In order to specifically identify the requested information, the PFCC explained this would mean going through each of the 4,575 files to specifically identify tenders for the provision of domestic abuse support services. It also explained that there is other information contained within these files that was not requested.
28. Additionally, the PFCC explained that the information contained within the secure/restricted drive for its procurement portal would also need to be cross referenced with any paper documentation/files which are not within a retrievable structured format, to ensure all relevant information could be provided to meet the request. It provided the following breakdown:
- Based on a minimum timing of 15 minutes per report/document this would equate to $4,575 \times 15 = 68,625$ minutes.
29. The PFCC also explained that there are a small number of reports contained within the 4,575 files that were over 100 pages in content.
30. Additionally, the PFCC confirmed that the systems that would require searching would include:
- Procurement Portal
 - Restricted drive
 - Email System (outlook)
 - Website
31. Furthermore, the PFCC explained that in order to search each file or document electronically and then cross reference each file or document, would mean using staff who would not have an in-depth knowledge of the process, to clearly establish whether the correct data had been identified. These staff would then have to establish, with the lead officers who took part in the exercise, that all the requested information had been obtained. Additionally, the PFCC explained that it would need to ask system administrators to carry out part of this task to ensure that a thorough search was completed of the numerous source systems, including those identified.
32. The PFCC explained that in relation to communications by its staff, there are 23 members of staff involved. Searches would had to have been carried out to try and identify what records of communication they held, if any. The PFCC also explained that systems used by all 23 members of staff would be need to be searched as 'victim support' does not just cover Domestic Abuse Support Services but would touch on other areas being worked on.

33. In addition, the PFCC explained that even a simple search of 'victim support' (as referred to by complainant in his request for an internal review) would not necessarily identify all meetings or communications; they would be determined by how the information has been recorded and whether it was recorded in a searchable and structured format. It also explained that not all communications are recorded through meeting invites or documented through formal minutes.
34. The PFCC explained that the systems it would need to search would include:
- Restricted drive
 - Email System (outlook)
 - Any mobile devices
 - Any systems not connected to the network
 - Website
35. In addition, the PFCC explained that for the retrieval and reading of data based only on the search parameter of 'recent tenders for provision of domestic abuse support services' it had identified 1,056 files. It provided the following breakdown:
- Outlook – 5 minutes per email - this would equate to 1,056 records x 5minutes = 5,280 minutes.
Reports – 15 minutes per report – this would equate to 1,056 records x 15 = 15,840 minutes.

Conclusion

36. The Commissioner has considered the PFCC's estimates, including the information provided by it in relation to the volume of information it would have to search and the estimated time it would take to do this. She considers that, given the volume of information held, a sampling exercise would not have been helpful or practical in this particular case.
37. Having considered the cost estimate provided in this case, the Commissioner considers that it is a reasonable one.
38. The Commissioner therefore considers that section 12(1) is engaged and that the PFCC does not have to comply with the request.

Section 16 – Duty to advise and assist

39. Section 16 of the FOIA imposes an obligation on public authorities to provide advice and assistance to a person making a request, so far as it

is reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed to the provisions in the Code of Practice (the code) in relation to the provision of advice and assistance to bring the cost of a request under the appropriate limit. This can be found in paragraph 2.10 of the code.

40. The PFCC explained that in its response to the request, it had stated that it was unable to assist in refining the request as it would have to exempt any information under section 43(2) (Commercial Interests) which is defined as information exempt under the FOIA, that would be likely to prejudice commercial interests, including the public authority that holds it.
41. In addition, the PFCC explained that to try and assist the complainant the scores, albeit anonymised, were disclosed to him; the decision form, which was in the public domain was also provided as a source of additional information.
42. Taking all of the above into account, the Commissioner considers that the PFCC has complied with its duty under section 16.

Procedural issues

43. The complainant submitted his request on 3 September 2018. The PFCC responded on 9 October 2018.

Section 10 – Time for compliance Regulation 5(2)

44. Section 10(1) provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
45. The Commissioner considers that the PFCC has breached section 10(1) as it took longer than 20 working days to provide a response.

Section 17 – Refusal of a request Regulation 14(1)

46. Section 17(1) provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working day time for compliance, citing the relevant exemption(s).
47. The Commissioner considers that the PFCC has breached regulation 17(1) as it took longer than 20 working days to provide inform the complainant which exemption it was relying on initially.
48. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft [Openness by design strategy](#) to improve standards of

accountability, openness and transparency in a digital age. She aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our [Regulatory Action Policy](#).

Other matters

49. The Commissioner notes that initially the complainant requested information regarding *"All information relating to the assessment and scoring of the recent tenders for provision of domestic abuse support services. Including the names, organisations and individual scores of each assessor, broken down by each bidders and under each question of the tender."*
50. During her investigation, the complainant confirmed that he was requesting information regarding a specific tender but refused to clarify which tender it was. The Commissioner considers that a complainant should provide her with any clarification needed as part of her investigation.

Right of appeal

51. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.

53. 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

[Name of signatory]
[Job title of signatory]
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