

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2019

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information relating to the procurement and implementation of software to replace one of its systems from the Metropolitan Police Service (the "MPS"). The MPS refused to comply with the request, saying that to do so would exceed the cost limit at section 12(1) of the FOIA.
2. The Commissioner's decision is that section 12(1) was properly applied. She also finds no breach of section 16 (advice and assistance) of the FOIA. No steps are required.

Background

3. By way of background information, the MPS has explained to the Commissioner:

"From January 2005-October 2018, MetRIC (Met Requests for Information and Correspondence) was used by the MPS to process and record all requests for information relating to the Data Protection Act (DPA), Freedom of Information Act (FOIA) and Environmental Information Regulations (EIR). It was also used to record items of correspondence and record deletion requests received from the general public. A business case to replace MetRIC was approved in April 2018 which led to the procurement of

CycFreedom which the MPS have been using to process FOIA, DPA and EIR requests since November 2018.

Further information relating to the background of the procurement and implementation of software to replace MetRIC can be found via the links below:

- <https://www.london.gov.uk/what-we-do/mayors-office-policing-and-crime-mopac/governance-and-decision-making/mopac-decisions-0/replacement-metric-system>
- https://www.london.gov.uk/sites/default/files/pcd_380_part_1_metric_replacement.pdf

Request and response

4. On 8 November 2018 the complainant wrote to the MPS and requested information in the following terms:

"Could you provide me with all information relating to the procurement and implementation of software to replace the Metric system. This should include but not be limited to project initiation documentation, requirement specifications, supplier submissions, emails related to the procurement and implementation, project plans, training plans and business justification papers. The information relates to the period from 1 September 2017 to the current date".

5. On 13 December 2018 the MPS responded. It refused to provide the requested information saying that to do so would exceed the cost limit at section 12(1) of the FOIA.
6. Following a refined request (which is being dealt with as a separate complaint by the Commissioner, under reference FS50840443), the complainant asked for an internal review of this request on 15 January 2019.
7. The MPS provided an internal review on 4 March 2019 in which it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 18 April 2019 to complain about the way his request for information had been handled. He asked the Commissioner to consider the application of section 12(1) to the request. The Commissioner will consider this below.

Reasons for decision

Section 12 – cost of compliance

9. Section 12(1) 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.
10. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
 - (a) *determining whether it holds the information,*
 - (b) *locating the information, or a document which may contain the information,*
 - (c) *retrieving the information, or a document which may contain the information, and*
 - (d) *extracting the information from a document containing it."*
11. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
12. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the MPS was reasonable; whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.

Would compliance with the request exceed the appropriate cost limit?

13. Section 12(1) requires a public authority to estimate the cost of compliance with a request, rather than to formulate an exact calculation. The question for the Commissioner to determine is therefore whether the cost estimate by the MPS was reasonable. If it was, then section 12(1) of the FOIA was engaged and the MPS was not obliged to comply with the request.
14. The Commissioner initially notes that although the request does relate to the recent procurement of a named IT system, which in itself may seem fairly narrow in scope, the actual wording of the request is much broader in that it states "*all information relating to*" and that this "*should include but not be limited to...*". This wording presents an 'open-

ended' search which requires much broader considerations. Were the request more specific then this might allow for information to be located within the 18 hour cost limit.

15. The MPS provided the Commissioner with a detailed submission about the searches which would be required to locate the wide-ranging information caught by the request. It explained that the estimated cost of locating, retrieving and extracting information from within email correspondence formed the basis of its cost estimation, emails being the most likely source of information within the scope of the request. It explained:

"Numerous individuals were involved in the procurement and implementation of software to replace MetRIC during the time period relevant to the request (i.e. September 2017 – 8th November 2018).

Initial enquiries were made with senior staff, primarily with [name removed], a Band S Business Engagement Manager and author of the business justification case for replacing MetRIC who advised:

- Multiple MPS departments would hold information within the scope of the request including Digital Policing, Commercial Services, Legal Services and the Solution Delivery Project Manager*
- 1,080 emails within a MetRIC/CycFreedom folder*
- Not including emails that either had not been archived or else archived in a different folder*
- Procurement process started in October 2017 and went through to August 2018*
- Implementation process ran from July/August through to November 2018*
- They took over from another member of staff*
- They were primarily involved in the procurement process (as opposed to the implementation)*
- The Solution Delivery Project Manager was heavily involved in the implementation and would likely hold a similar volume of emails if not more.*

At least 25 people across 10 MPS directorates or departments are named in the business case as either having provided assurance or consultation in relation to the business case. Each of these individuals potentially contacted one or more additional individuals in relation to the procurement of software to replace MetRIC".

16. The MPS then provided the Commissioner with a table including the department and job titles of the individuals who may hold relevant

information, some of which have since left the MPS. These were described as follows:

HQ Strategy & Governance

Director of Information & Insight (now left)
Temporary Head of Information Law and Security (now left)
Information Security Officer & Head of Information Assurance (now left)
Temporary Head of Information Rights Unit
Head of External Relations
Senior Privacy Advisor

AC Professionalism

LDSS [Locally Delivered Support Services] Service Delivery Director
LDSS Implementation Lead
LDSS Area Service Delivery Manager Central Team
Chief Inspector – DPS Misconduct Hearings Unit
Detective Constable – DPS Serious Misconduct Investigations Unit

Commercial Services

ICT Category Consultant (now left)

Digital Policing (DP)

Head of Enterprise Architecture
Director of Technology & Business Engagement
Business Engagement Manager – MethQ & Prof.
Head of HQ Apps

Finance Business Partnering

Strategic Finance Business Partnering (DP)
Strategic Finance Business Partnering (HQ)
Strategic Finance Business Partnering

Legal (DLS)

Assistant Director (Policy) DLS
DLS Solicitor

Strategic Design Authority

Head of Integrated Design & Delivery

Strategic Diversity & Inclusion

Inspector Strategic Inclusion and Diversity Unit

OMM Benefits

MPS Benefits Lead

Portfolio Management Office

Portfolio Performance Manager

17. Basing its response on the broad scope of the request, the MPS went on to explain that after the business case had been approved in April 2018 there would be further information relating to the implementation of the replacement software. This would include information relating to:

- Downgrading the service support level for MetRIC
- Transferring data that is up to 2 years old from MetRIC to the new case management system
- Decommissioning MetRIC and related hardware (e.g. servers)
- Communicating with approximately 250 MetRIC users and users of the new system
- Testing the new system
- Setting up the new system
- Training on using the new system

It advised that each of these steps would then involve numerous additional tasks and communication with multiple individuals, both internally and externally.

18. The MPS further advised the Commissioner it would need to consider any information held by its Information Rights Unit (IRU). It said:

"The IRU is primarily responsible for MPS compliance with the Data Protection Act 2018 and Freedom of Information Act 2000 and are the main users of MetRIC and the replacement software (CycFreedom). Consequently, staff within the IRU had varying degrees of input into the procurement and implementation of CycFreedom. However, because MetRIC is used to process requests for information, a keyword search on the term 'MetRIC' would identify lots of emails that are not relevant to the request (i.e. false positives). Keyword searches may also exclude emails relevant to the request (i.e. false negatives).

Enquiries have been made with a member of staff within the IRU that identified 374 emails with the 'keyword' MetRIC that would need to be reviewed to establish whether they are within the scope of the request as they could relate to other matters (e.g. MetRIC cases, MetRIC issues or performance metrics). It is also possible that emails within the scope of the request do not contain MetRIC as a keyword.

... Several additional staff within the IRU were heavily involved in the testing and implementation of CycFreedom and related MetRIC issues who would likely hold more information.

Furthermore, 3 senior staff members with management responsibility for the IRU during the time period relevant to the request had left the MPS by the time the request was received. Specifically, the deputy data protection officer, data protection officer and group director (Director of Information & Insight) who would have had more involvement in the procurement process than the IRU staff members referenced earlier. Consequently, their emails could only be accessed by retrieving information from backup tapes. This would also be subject to a number of variables as depending upon the date the data was backed up and the way in which individuals managed their emails. For example, if any emails were deleted or stored within a personal archive folder they could easily be overlooked.

Another member of the IRU's senior management team with the potential to hold information within the scope of the request has also left the MPS prior to the applicant's request.

Although the IRU were intended to be the primary users of the replacement software for MetRIC, other areas of the MPS had been identified as potential users including the MPS Directorate of Professional Standards, Locally Delivered Shared Support Services (LDSS), Vetting unit and the Commissioner's Private Office.

The Commercial Services Category consultant, who also left the MPS prior to the request is also believed to have held numerous emails with the scope of the request including correspondence with the applicant.

The time required to locate, retrieve and extract email correspondence was the basis of the MPS cost estimation and would likely encompass most of the information within the scope of the request that is held by the MPS.

The Freedom of Information Act provides a right of access to information not documents and it is possible that the procurement and implementation of software to replace MetRIC is referenced within documentation predominantly relating to other matters, for example any record of meetings or high level overviews of issues within different units impacted by the procurement and implementation process.

Information relevant to the request may also be held in other formats or information systems. For example, the MPS uses an integrated system for HR, finance and buying goods and services called PSOP which should also hold information relating to the

purchasing of goods and services relating to the procurement of CycFreedom”.

19. The Commissioner asked the MPS whether or not it had undertaken any sampling exercises. She was advised that a small exercise had been undertaken in relation to the emails held by one individual within the IRU. The individual had 156 emails stored in a MetRIC-related folder in their email account which covered the relevant time period. In the exercise, 40 emails were reviewed within four minutes to determine whether or not they were caught by the scope of the request. Ten of these (ie one in four) were determined to be relevant. This suggested that it would take approximately six seconds per email to determine whether it was within the scope of the request, which would in turn suggest that it would take approximately 15 minutes to check all of these emails. However, the MPS added that this was a very conservative estimate as it did not include emails which may be held outside of the folder which was considered, and such emails would be harder to identify due to the volume of emails held and the limitations of keyword searches. It would also require additional time to run search queries and filter or check the search results.
20. The MPS also advised that the individual whose emails were sampled had had minimal personal involvement in the procurement and implementation process, compared to other staff members who would be likely to hold more information that may also prove more difficult to extract. All the emails which had been considered in the exercise were also already organised and held in one folder making searches much simpler. It speculated that other individuals may reasonably take longer to locate, retrieve and extract relevant information.
21. The same individual undertook a further keyword search 'outside' the named folder and, in relation to emails sent or received within the relevant time period, identified approximately 400 emails with the keyword 'MetRIC' and 300 emails containing the keyword 'CycFreedom'. These results did not account for duplicates (ie emails where both search terms are present). It was also noted that each of these emails may indicate additional locations or individuals who may hold relevant information and the dip sampling exercise also did not take this into account.
22. The MPS concluded:

" ... based upon a very conservative estimate of 6 seconds per email to determine whether it was within the scope of the request (i.e. to locate, retrieve and extract), I estimate that it would take at least 70 minutes to review an additional 700 emails that are not contained within a specific 'MetRIC' folder. It is possible that

relevant information is held that would not be identified by these keyword searches which could require reading additional emails.

This would suggest that a total of 85 minutes would be required to identify emails within the scope of the request held by one person.

The appropriate cost limit equates to 18 man-hours or 1,080 minutes. Based upon this dip sample, I estimate that 13+ people conducting similar enquiries would be sufficient to exceed the appropriate cost limit (i.e. $1,080 / 85 = 12.7$).

As noted earlier, at least 25 people have been consulted in relation to the procurement of replacement software. Many of these individuals would have held more emails and/or further information in addition to corresponding with other staff members who may hold additional information. The implementation would have involved additional people including the end users of the system (approximately 250 users).

Assuming a conservative estimate of 25 individuals, who would need to check their emails at a minimum, each taking 85 minutes to locate, retrieve and extract information relating to the request, I estimate that it would take at least 2,125 minutes to identify information within the scope of the request (i.e. $25 \times 85 = 2,125$).

At least 5 individuals who were consulted in relation to the procurement of software to replace MetRIC no longer work for the MPS meaning that emails would have to be retrieved from archived backup tapes which itself can be a time consuming process before any searches could be conducted and may also be subject to a number of variables.

The cost estimation has not considered any time required to retrieve information that is not contained within an email or the time required to conduct the keyword search".

The Commissioner's conclusion

23. The complainant is of the view that the information he has requested should be easily retrievable. However, 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 cost limit. On that point, the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)¹ has commented that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".

24. With that point in mind, the Commissioner considers the cost estimate provided to her by MPS to be cogent, and quite conservative in terms of the time it has estimated for carrying out its search tasks. Based on the calculations at paragraph 22 above, this is shown to be a minimum of 2,125 minutes, or 35.4 hours, to look at 25 email accounts. Taking all the above into account, the Commissioner considers that the MPS has demonstrated that its cost estimate was reasonable and thus that it was not required to comply with the request by virtue of the provisions of section 12(1) of the FOIA.

Section 16 – advice and assistance

25. Section 16(1) of the FOIA provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

26. 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 appropriate cost limit.
27. In its refusal notice, the MPS explained that it was unable to suggest any practical way in which the request could be modified in order to bring it within the appropriate limit. At internal review stage, the MPS provided a link to the project proposal document in relation to replacing MetRIC and suggested that the applicant may wish to submit a request for specific emails within a very narrow time frame and that a copy of the Metric Business Requirement spreadsheet could be requested.
28. In this case the MPS explained to the complainant about how the information is held and why compliance would exceed the limit, albeit not in as much detail as was provided to the Commissioner. She notes

¹ <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

that it doesn't suggest how he may refine his request although it does refer to its duty to advise and assist and tries to consider how this can be done.

29. At internal review stage it explains:

"Unfortunately, the information requested is not held in a central place on an easily searchable, single database. There is no automatic means of extrapolating the information you require within the time constraints allowed for FOIA requests..."

Your request is extremely broad and covers both electronic and paper records. It also covers various departments / units within the MPS such as the Information Rights Unit, Procurement, Commercial Services, and the Directorate of Legal Services. Some of the information you have requested is held on the email accounts of staff who have left the employ of the MPS

You have said that a simple key word search using the word 'Metric' could be conducted. Even if your request were limited to Email correspondence, it would still be an onerous task, given the number of individuals, departments and units involved. Any information retrieved would have to be reviewed manually to ascertain if it is relevant to your request. Additionally, locating and retrieving Emails of former staff whose Emails accounts are closed is a very time consuming task".

30. The Commissioner cannot see any easy way in which the complainant's request could be responded to within the appropriate limit. She does however note that a further related request had been submitted for her consideration which is an attempt by the complainant to narrow his request.
31. Based on the wide-ranging wording of this request, she concludes that there was no easy way for the MPS to suggest how he could refine it. She therefore finds there was no breach of section 16.

Other matters

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

Internal review

33. 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.

34. 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.
35. The Commissioner is therefore concerned that it took the MPS 34 working days to conduct an internal review in this case.

Engagement with the Commissioner

36. Due to a lack of response to her enquiries the Commissioner necessarily issued an Information Notice in this case in order to progress her investigation. This resulted in a significant delay.
37. 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 strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her Regulatory Action Policy³.

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

38. 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

39. 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.

40. 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
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