

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 December 2021

Public Authority: Chief Constable Police Service of Northern Ireland

Address: PSNI Headquarters
65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant requested information from the Police Service of Northern Ireland ("PSNI") about the number of student and police officers charged with or had a criminal conviction during 2019/2020.
2. The Commissioner's decision is that the PSNI were entitled to refuse to comply with the request under section 12(1) of the FOIA, and that it has complied with its obligations under section 16(1) of the FOIA to provide adequate advice and assistance to the complainant. However, PSNI failed in its obligation to respond within 20 working days of the request, and therefore breached section 10(1) of the FOIA.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 17 March 2021, the complainant wrote to the PSNI and requested information in the following terms:

"Request 1

During 2019/2020 how many people who have gone on to be student officers passed the vetting panel with a criminal conviction.

Request 2

During 2019/2020 how many police officers have been charged/convicted of a criminal offence. Detailing the number of charges and which law they were in breach of.

Request 3

Of those convicted/charged how many were dismissed from PSNI."

5. The PSNI responded on 19 April 2021, citing section 12(1) FOIA to refuse the disclosure of the requested information, and upheld their response at internal review on 28 May 2021.

Scope of the case

6. The complainant contacted the Commissioner initially on 27 April 2021, advising the PSNI had not yet provided the internal review response. On 29 May 2021, the complainant contacted the Commissioner after the internal review had been completed, to complain about the way their request for information had been handled.
7. The Commissioner considers the scope of this case is to determine if the public authority has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance exceeds the appropriate limit

8. Section 1(1) of the FOIA states that:

"(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

9. Section 12(1) of the FOIA states that:

"Section 1(1) does not oblige a public authority 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. 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.
11. A public authority is only required to provide a reasonable estimate, rather than a precise calculation, of the cost of complying with the request, and in putting together its estimate it can take the following processes into consideration:
 - 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.
12. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*¹, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*".
13. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.

The PSNI's position

14. The PSNI informed the Commissioner that when the request was initially received, work was undertaken to confirm if the information was held. It explained that to provide the information requested it would require locating, retrieving, extracting, and collating information and data from specific business areas and information sources. Due to the breadth and

¹<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

nature of the request, they estimated that meeting the request could not be done within the appropriate limit set out by the FOIA.

15. The PSNI further explained that it became apparent that the work involved to obtain the initial information would exceed the cost limit:

"...there was no central database that contained the data requested. In order to obtain a response for the request, it would be necessary to recheck each individual applicant who was employed during the time period specified in the request. PSNI Corporate Information Branch advised that this would require the checking of approximately 600 applications and that it would take 5 minutes to research each application, resulting in approx. 50 hours work."

16. The PSNI also explained to the Commissioner:

"It is our view that to comply with this FoI request would far exceed the cost threshold, and this is evidenced from the sampling exercise undertaken. From our sampling exercise of 10 individuals, 5 electronic files and 5 hard copy files, on average we estimate (5 minutes per person to search emails and files by the key words) it would take a member of staff in excess of 50 hrs to locate what information is in scope. This far exceeds the cost limit of 18 hours afforded by the legislation."

17. And went on to say after further refinement:

"The business area can confirm the 10 files sampled were indicative of all 582 applications, being both a mixture of hard copy and electronic materials. Based on the above, the total time taken to retrieve the relevant information for ten individuals was 39 minutes. This equates to 3.9 minutes per application. When applied to the 582 applications this would amount to 37.8 hours of work; therefore, this would exceed the 18 hours afforded by the legislation."

18. An explanation was given of the above:

"Retrieval methods were taken into account when processing this request. As above there is no central database holding all the information requested. Whilst there is a student officer database in relation to convictions, it does not capture convictions from outside the jurisdiction and therefore would not accurately reflect the number of persons with convictions. This is why information in relation to student officers requires either a manual electronic or manual hard copy search."

19. They also advised that:

"The information provided under refinement, that linked to officer convictions (not convictions and charges) can be provided within cost as it is held on a central database, and this was communicated to the requester."

This information was disclosed to the complainant within their subsequently revised request of 2 June 2021.

20. From the PSNI's submissions and the initial investigatory work undertaken; it was evidenced that to comply with the request in full would exceed the appropriate limit.

The Commissioner's conclusion

21. Paragraph 6.6 of the Freedom of Information (FOI) Code of Practice states:

"Public authorities do not have to search for information in scope of a request until the cost limit is reached, even if the applicant requests that they do so. If responding to one part of a request would exceed the cost limit, public authorities do not have to provide a response to any other parts of the request."²

22. The Commissioner's guidance states that whilst a public authority may search up to or even beyond the appropriate limit of its own volition, there is no requirement for a public authority to do so. For more information, see paragraph 28 onwards of the Commissioner's guidance on costs of compliance exceeds appropriate limit.³

23. During the investigation, the PSNI provided the Commissioner with a detailed explanation of what it would need to do to obtain the requested information. The Commissioner accepts that the PSNI's estimates are reasonable and that it would exceed the appropriate limit to obtain the information.

² [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

24. The Commissioner acknowledges the complainants view that disclosure of the information is in the public interest, however, section 12 of the FOIA is not subject to a public interest test. The Commissioner notes why the complainant would want this information.
25. However, the Commissioner considers that the PSNI estimated reasonably that the request could not be answered within the cost limit, and as such, the PSNI are entitled to rely on section 12(1) of the FOIA to refuse the request.

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

26. Section 16 of the FOIA states:

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

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."

27. Where a public authority refuses a request under section 12(1) of the FOIA, section 16(1) creates an obligation to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
28. In this case, the PSNI suggested narrowing the request and advised the complainant of the information that could be provided to him if he wished to receive it under Section 16 of the Act. The requester then submitted a request for this refined information on 2 June 2021.
29. The Commissioner has considered the advice and assistance provided to the complainant by the PSNI, and paragraph 6.9 of the FOI Code of Practice advises that helping an applicant narrow the scope of their request may include suggesting that the subject or timespan of the request is narrowed.
30. The Commissioner considers that the advice and assistance the PSNI offered the complainant was adequate. The Commissioner is therefore satisfied that the PSNI have complied with its obligations under section 16(1) of the FOIA in its handling of this request.

Section 10 – Time for compliance with request

31. Section 1(1) of the FOIA states that:

"(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

32. Section 10(1) states:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

33. The PSNI apologised to the complainant for the delay in providing its response.

34. Notwithstanding the circumstances at the time of the request, the PSNI breached section 10(1) by responding outside the statutory timeframe.

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@justice.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

Catherine Fletcher
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SK9 5AF