

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2022

Public Authority: Commissioner of Police of the Metropolis
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested statistics relating to the identification of images received by the Metropolitan Police Service (the "MPS") from 1 September 2020 to 31 August 2021.
2. The Commissioner's decision is that MPS was entitled to rely on section 12(1) of FOIA. There was no breach of section 16(1) (Advice and assistance).
3. The MPS has failed to comply with its duty under section 1(1) of FOIA to issue a refusal notice "promptly and in any event not later than the twentieth working day following the date of receipt." In failing to issue a response to the request within 20 working days, the Commissioner's decision is that the MPS has breached section 10 of FOIA.
4. The Commissioner does not require the public authority to take any steps as a result of this decision.

Request and response

5. On 2 September 2021, the complainant wrote to the MPS and requested information in the following terms:

"From 1st September 2020 to 31st August 2021,

1. How many unidentified images were received by the Met Circulation Unit ?

2. How many images were identified?

3. How many identifications resulted in an offender being brought to justice?"

6. The MPS responded on 8 November 2021. It refused to provide the information because the cost of compliance with question 3 alone exceeded the appropriate limit at section 12 of FOIA.
7. Following an internal review, the public authority wrote to the complainant on 23 November 2021 and maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 24 November 2021 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if MPS has correctly cited section 12(1) of FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of 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 cost limit.
11. 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.
12. 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.

13. Section 12 of 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?

14. 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 FOIA was engaged and the MPS was not obliged to comply with the request.
15. In refusing the request the MPS originally advised the complainant as follows:

“For us to provide you with the information requested for Q3 we would have to manually read through several thousand CRIS records to pick out the information which may be in the DETS page which is a free text field. This is because our systems cannot easily search and pick out this information.

We therefore estimate that the cost of complying with this request would exceed the appropriate limit. The appropriate limit has been specified in regulations and for agencies outside central Government; this is set at £450.00. This represents the estimated cost of one person spending 18 hours [at a rate of £25 per hour] in determining whether the MPS holds the information, and locating, retrieving and extracting the information.

We may be able to provide you with the information requested for questions 1 and 2 subject to any exemptions that may apply.”

16. The MPS further explained the reasons for its decision in the internal review response as follows:

“In respect of question 3, there is not an automatic means of retrieving the information you seek. We do not have flags/markers on our databases to easily identify and extract the requested information.

The data requested is recorded within FIMS (Forensic Image Management System) and CRIS (Crime Report Information System). The data from these two platforms are not easily interchangeable. For example, a CRIS report may record that a charge has been made, but it will not always record whether this charge was brought due to the image identification. It might be that the charging decision has been made due to a positive DNA identification or another investigative strand.

You have asked about information concerning an offender being brought to justice [sic]. It should be noted that the MPS does not routinely record conviction data. This information, where held, is generally recorded by the Ministry of Justice.

FIMS records whether a case has subsequently been resolved in any way and this data is recorded manually by viewing the CRIS report and updating FIMS. If there is any kind of result, the FIMS record is 'resulted' and a reason is recorded, such as charged, no further action by CPS, victim unwilling to proceed etc. This will not routinely indicate whether this was due to the FIMS identification.

I have been advised that due to limitations with the report generating facilities within FIMS, we are not able to produce figures for a single reason for a 'result'. We can only produce figures for the total number of 'resulted' cases for **any** reason. To provide a figure for the number of resulted cases, would not give an accurate figure to the question you have asked. It would simply provide a figure for the number of closed investigations. Bearing in mind that the dates requested are for September 2020 - August 2021, many of these investigations are still ongoing and are still awaiting results.

To obtain data which fully answers question 3 would require detailed CRIS searches of individual records for thousands of investigations, and even then, the results would be limited to the details entered into the CRIS system by investigating officers."

"The ICO guidance on the application of Section 12 exemption states:

'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'

'A public authority is not obliged to search up to the appropriate limit.'

The ICO guidance on the application of Section 12 exemption states:

Estimates and searches

28. A public authority is not obliged to search for, or compile some of the requested information before refusing a request that

it estimates will exceed the appropriate limit. Instead, it can rely on having cogent arguments and/or evidence in support of the reasonableness of its estimate. It is good practice to give these arguments or evidence to the requestor at the outset to help them understand why the request has been refused. This reasoning is also likely to be required if a complaint is made to the Information Commissioner.

29. However, it is likely that a public authority will sometimes carry out some initial searches before deciding to claim section 12. This is because it may only become apparent that section 12 is engaged once some work in attempting to comply with the request has been undertaken.

30. If a public authority does carry out some searches, it may wish to bear in mind the following points:

- If a public authority starts to carry out some searches without an initial estimate, it can stop searching as soon as it realises that it would exceed the appropriate limit to fully comply with the request.
- A public authority is not obliged to search up to the appropriate limit.
- If a public authority initially estimates that it could complete its searches under the appropriate limit, but then finds that it cannot, it can stop searching once it reaches that limit. This is because it is not obliged to continue searching just because it originally estimated that the searches could be completed within the appropriate limit.

The following from ICO guidance is also of relevance:

32. As a matter of good practice, public authorities should avoid providing the information found as a result of its searching and claiming section 12 for the remainder of the information. It is accepted that this is often done with the intention of being helpful but it ultimately denies the requestor the right to express a preference as to which part or parts of the request they may wish to receive which can be provided under the appropriate limit."

17. The MPS provided the Commissioner with a detailed submission about the searches which would be required to locate the information that falls within the scope of the request. These submissions have been provided to the Commissioner by the public authority in strict confidence and therefore the details cannot be disclosed within the decision notice. It is the Commissioner's view that to include the details of the submissions in the decision notice will disclose the requested information. Nevertheless, the Commissioner has fully considered these submissions in reaching his decision in this matter.

Commissioner's view

18. Having considered how the complainant has worded question 3 and the way in which the MPS holds the information requested, the Commissioner finds that the estimates provided are realistic and reasonable. He therefore accepts that to provide the information would exceed the appropriate limit at section 12(1) of FOIA and the MPS was not therefore required to comply with the request.

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

19. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
20. The MPS advised the complainant that, if they remove question 3 from their request, the MPS would be able to answer the remainder of the request subject to any FOIA exemptions that may apply.
21. The Commissioner considers that this was an appropriate response in the circumstances. He is therefore satisfied that the FCA met its obligations under section 16(1) of FOIA.

Right of Appeal

22. 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

Reference: IC-142379-S9J7



- 23. 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.
- 24. 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

**Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
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