

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 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 training guides, or their equivalent, for its officers from the Metropolitan Police Service (the "MPS"). Having originally disclosed some information and cited exemptions in respect of the remainder, at internal review the MPS advised that to comply with the request would exceed the appropriate limit at section 12 (Cost of compliance) FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 12 FOIA and that it did not breach section 16 (Advice and assistance). However, he finds that it breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period. No steps are required.

Request and response

3. Following earlier correspondence, on 2 April 2022 the complainant wrote to the MPS and requested information in the following terms:

"After careful consideration I would like to submit a revised request for information. Please note that the reference to employees in the questions below should now be taken to mean only uniformed officers (of any rank). Please redact the names and personal details of all force employees from any documents and information disclosed ...

1 ... Does the Metropolitan Police forces HR department or [similar] provide all and or any of the following to uniformed officers (of any rank) when they are classed as new recruits to the force

(a) ... A language guide or similar which advises employees on the most appropriate words, phrases, and terms to use when writing to and or communicating with and or referring to their colleagues and or members of the public and or the organisation's clients/customers/service users and or representatives and employees in the organisation's stakeholder and partner organisations. Typically, such a guide will outline words, terms, and phrases to avoid for whatever reason while providing more acceptable words, terms, and phrases. Such guidance could be included in a staff handbook (or similar) or it could be issued in the form of specific written advice. Alternatively, it could be included on the organisation's intranet site and or it could be issued/held digitally and or it could be included in any training/induction video/film.

(b) ... A guide or similar which helps and encourages employees to promote diversity and inclusivity both in the workplace and or in their dealings with members of the public and or in their dealings with the organisation's clients/customers/service users and or in their dealings with employees in and or representatives of the organisation's stakeholders and any partner organisations. The guide will include but not be limited to advice on best practice when it comes to diversity and or inclusivity and or anti-discrimination policies. It will encourage staff how to avoid discrimination on the grounds of race under religion and or gender and or sexuality and or age and or disability and or political belief and or social class and or income and or social background. Such guidance could be included in a staff handbook (or similar) or it could be issued in the form of specific written advice. Alternatively, it could include on [sic] the organisation's Internet site and or it could be held/issued digitally and or it could be included in any training/induction film/video.

(c) ... A guide or similar which advises employees on the importance of respecting and using a person's preferred gender pronoun. That person could be a colleague and or a member of the public and or one of the organisation's customers/clients/service users and or an employee and or representative of a stakeholder or partner organisation. Such guidance could be included in a staff handbook (or similar) or it could be issued in the form of specific written advice. Alternatively, it could be included on the organisation's intranet site and or it could be held/issued digitally and or it could be included in any training/induction film/video.

2 ... If you have answered yes to any part (or indeed all of question one) can you please provide copies of the guidance irrespective of the form in which it is issued.

3 ... Since April 1, 2020, has the force's HR department (or similar) issued any kind of guidance (as defined in question 1 a to c) to other employees who were not new recruits at the time that guidance was issued. If the answer is yes, can you, please provide copies of the guidance irrespective of the form in which it is issued".

4. On 12 July 2022, the MPS responded. It disclosed some information, but withheld the remainder citing sections 31(1) (Law enforcement) and 43(2)(Commercial interests) of FOIA.
5. The complainant requested an internal review on 13 August 2022.
6. The MPS provided an internal review on 10 September 2022, in which it revised its position. Having reconsidered the request it found that it was too broad and instead relied on section 12(1) (Cost of compliance) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 30 July 2022 to complain about the way his request for information had been handled. This was prior to him having requested an internal review so he was required to do so by the Commissioner.
8. Following receipt of the internal review, the complainant asked the Commissioner to consider the MPS's change of stance and the application of section 12 FOIA to the request. He was also dissatisfied the "quality of the information disclosed", delays in dealing with the request and "the Met's administrative 'mix ups' which have only served to complicate the process". The Commissioner's comments regarding the "quality of the information disclosed", the "mix ups" and the change of stance at internal review are in "Other matters" at the end of this notice. He will consider timeliness and section 12 below.
9. The Commissioner has reached his decision on the basis of the documents provided.

Reasons for decision

Section 1 – General right of access

Section 10 – Time for compliance

10. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
11. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
12. The request was submitted on 2 April 2022 and the complainant did not receive a response, which confirmed that the MPS was in possession of the relevant information, until 12 July 2022. The Commissioner therefore finds that the MPS has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Section 12 – cost of compliance

13. 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.
14. 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."
15. 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.
16. 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.

Background

17. The Commissioner initially notes that, when responding to the complainant's request, by way of disclosure the MPS advised him as follows:

"There is no documentation/handout paper based or digital that is provided to the new recruits (Student Police Officers) around these topics. They do learn about diversity, inclusion and engagement during their 17 weeks initial training at HEIs [Higher Education Institutes]. this is broken down into:

- 2 hours communication skills and teamwork with a session aim to introduce student police officers to some fundamental communication principles and basic approaches to communication within the framework of their role as a constable working within a team.
- 7 hours on Engagement and Inclusion with session aims to develop the student police officers understanding of key factors affecting equality, engagement and inclusion of the community, within the framework of the Equality Act, unconscious bias and the national decision model.
- The officers have multiple professional standards inputs which cover communicating with the communities and colleagues including the rank system and use of nicknames.
- They also have a week on their BCU [Basic Command Unit] where they learn about the communities they will be policing and having inputs from different diverse groups which make up that area.

The different subjects are covered robustly using different learning styles with activities including, but not limited to, group discussion, team tasks and role plays. The student officers are encouraged to make their own notes on the learning and are provided with reading material created the by [sic] college of policing".

(The MPS also cited exemptions in connection with this disclosure).

Number of records to be checked and cost estimate

18. The MPS advised the complainant that it does hold relevant information. However, it explained to him:

"Your request for information is widely scoped and it requires searching for information across the MPS. You have requested 'guides or similar' advising on appropriate words, phrases and terms which could be included in a staff handbook, in the form of specific written advice, issued/held digitally or included in any training/induction video/film, issued to other employees who were not new recruits.

The MPS provides both formal and informal training in a variety of ways and there is no central database from which we can derive the information that you seek. To provide an accurate response to your request would require us to contact each police officer to ascertain what training in relation to your requests they have received. The MPS has in excess of 34,000 officers, therefore, to complete this task would be onerous and would far exceed the FOIA cost threshold".

19. The complainant has stated: "I believe the force's HR unit (or similar) would issue the relevant information to all of its new and existing officers". However, as evidenced above, initial training is undertaken at HEIs as well as from the Professional Standards Department and locally at the BCUs. This is therefore not the case. Any training and structure is also likely to change regularly and the complainant has not specified a time frame.
20. Whilst the complainant is dissatisfied with this response, the Commissioner accepts the rationale on this occasion as the MPS has clarified that there is no central training database which would contain **all** the relevant information. The Commissioner notes that the request is 'open-ended', ie there is no time frame, so some information could be only held in paper format and may be very old. It is therefore not clear to the Commissioner how else the MPS would be able to establish with certainty what information is held without contacting its staff to ascertain what training they have been on and any records they have retained.
21. The Commissioner notes that the complainant has had some information provided by other police forces. However, it is important to note that not all forces have the same information systems. Therefore, although other forces may have been able to provide some information it does not follow that the MPS, as by far the largest police force, can also do so.
22. Having considered the rationale provided the Commissioner finds it is realistic and reasonable. He therefore accepts that to provide the information would exceed the appropriate limit.

Section 16 – advice and assistance

23. Section 16(1) of 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(1) 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.
24. In this case, the MPS provided some information to the complainant, as cited in paragraph 17 above. It also provided links to information available online, albeit the complainant did not find this to be of use. It has explained to the complainant that the information is not held centrally and why compliance would therefore exceed the limit.
25. Based on the wide-ranging wording and the open-ended timeframe of this request, the Commissioner concludes that there was no easy way for the MPS to suggest how he could refine his request. He therefore finds there was no breach of section 16.

Other matters

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

Quality of information disclosed

27. In first responding to this information request, the MPS cited exemptions but did provide some information. This was in form of a summary about the training given rather than disclosure of any of the material requested, as per paragraph 17 above.
28. Whilst this was not what the complainant actually wanted, a summary may be a suitable way of dealing with a request and may be acceptable to some requesters.
29. Clearly the complainant was dissatisfied, and his subsequent request for an internal review was the appropriate point for him to address any such concerns.

“Mix-up”

30. The request under consideration here was a follow on from a related request and the reference numbers seem to have been confused.
31. In correspondence with the complainant, the MPS advised him:

"... It appears that there was an administrative error and the internal review was linked to request [A] instead of request [B]. I apologise for any confusion caused by this error".

32. Whilst the confusion has therefore now been rectified, the Commissioner would remind the MPS to ensure it is careful when citing reference numbers, particularly when there are multiple or overlapping requests.

Internal review

33. The complainant has expressed dissatisfaction with the MPS's decision to revise its position having carried out an internal review. He said:

"... the Met had previously stated in its response to the original request that it had already located and examined information relevant to the request. After examining all the information, it decided to apply exemptions Section 31(1) and Section 43(2).

... I don't believe the Met has carried out an independent review which can be said to be in keeping with the spirit of the access legislation. Reading the IR response I get the impression, rightly or wrongly, that the Met is simply trying to come up with any argument it can think of to avoid disclosure. The MPS now realises its arguments about 'law enforcement' in the original response are unstainable' [sic] so it has simply switched tactic".

34. As stated in his guidance to public authorities¹ (emphasis added):

"Internal reviews should consider how the request was handled and the initial response, whether the relevant information was identified, and whether you wish to uphold the original exemptions or **whether you wish to apply a different or additional exemption(s)**".

35. The Commissioner therefore finds it acceptable for the MPS to reconsider its position in the way it has. The request was considered by a different person, which is also in line with the Commissioner's recommendations, who has reached a different conclusion.
36. Whilst it is unfortunate that the original request implies that some information has been located and exemptions applied, having agreed with the revised position regarding section 12 above, clearly the

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/>

searches originally undertaken were not wide enough. This evidences the need to conduct an independent internal review.

37. The Commissioner does not concur with the complainant's views that the MPS is "trying to come up with any argument it can think of to avoid disclosure", rather he considers that the request is both wide-ranging and open-ended.

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: 0203 936 8963

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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