

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 January 2022

**Public Authority:** Chief Constable of Northumbria Police

**Address:** Northumbria Police Headquarters  
Middle Engine Lane  
Wallsend  
Tyne & Wear  
NE28 9NT

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Northumbria Police information related to communications it held in relation to a demonstration that took place on 5 September 2020. Northumbria Police refused to comply with the request, stating that it would exceed the cost limit under section 12(1) of the FOIA to do so.
2. The Commissioner's decision is that Northumbria Police is not obliged to comply with the request under section 12(1) of the FOIA. He also finds that Northumbria Police complied with its obligations under section 16 of the FOIA.
3. The Commissioner does not require Northumbria Police to take any steps to ensure compliance with the legislation.

#### **Request and response**

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4. Following the complainant's initial contact with Northumbria Police and its request to the complainant to clarify their request, on 5 October 2020 the complainant wrote to Northumbria Police to confirm that their information request was formulated as follows:

*"1. I request from Northumbria Police copies of all the communications (including correspondence, agreements made, concessions made by Northumbria Police) regarding the demonstration which took place on 5<sup>th</sup> September 2020 named Black Lives Matter – Trump Has Blood On His Hands Stop The Racist Killings, from/to the following organisations North East Against Racism (NEAR) Sunderlandunites, County Durham Unites and Sound System Protest NE. The information I require would have been logged in the period between 5<sup>th</sup> August – 5<sup>th</sup> September. I am aware that the Silver commander on the day 5<sup>th</sup> September 2020 was an Inspector Steve Readie 7319 and so I would presume all the information I require would be in the inbox of this officer and in report sent to/from this silver commander to/from the gold commander in this instance whose name and number I do not currently know.*

*To clarify I am also looking for the outcomes of meetings/correspondence had between groups and individuals wishing to oppose this demonstration.*

*2. As part of this request I'm interested to know how it came about that a Northumbria Police PLO sergeant insisted people speaking did so from on top of a soapbox rather than the steps of the Monument."*

5. On 12 October 2020, Northumbria Police contacted the complainant to seek further clarifications. In relation to the first part of their request, it asked them to clarify *"if you are seeking "all communications" by the force, or simply "all communications" in the inbox of the officer identified."*
6. On the same day, the complainant wrote back to Northumbria Police and stated that they were seeking *"all communication in the inbox of the previously mentioned officer including all communications between the silver and gold commanders in relation to my request. With regards to the communication between silver and gold commanders if this was communicated/recorded in a format other than email I request this also."*
7. Northumbria Police responded on 23 October 2020. It stated that in order to comply with the first part of this request it was estimated that it would take more than 18 hours, which is the limit prescribed to comply with a request. Therefore, Northumbria refused to comply with the first part of the complainant's request citing section 12(1) of the FOIA as the basis for the refusal. In relation to the second part of the request, it stated that no information was held in recorded form.

8. Remaining dissatisfied with the response received, on 29 October 2020, the complainant wrote back to Northumbria Police and asked for an internal review of the initial response. The complainant presented their arguments to object to the application of section 12(1) of the FOIA in relation to this request.
9. Northumbria Police conducted an internal review and sent the outcome of this internal review to the complainant on 15 January 2021. It provided the complainant with additional explanations about how it reached the decision to apply section 12(1) of the FOIA in relation to their request, but it did not change its initial position.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 1 February 2021 to complain about the way their request for information had been handled.
11. The scope of this case and the following analysis is to consider whether Northumbria Police was correct to apply section 12(1) of the FOIA to the request in this case and whether it complied with its obligations under section 16 of the FOIA.

### **Reasons for decision**

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#### **Section 12(1) – cost of compliance exceeds appropriate limit**

12. 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."*

13. 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."*

14. The "appropriate limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the

Fees Regulations”), and is set at £600 for central government departments and £450 for all other public authorities. The Fees Regulations set the appropriate limit at £450 for Northumbria Police; they also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that the appropriate limit for Northumbria Police equates to 18 hours.

15. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:
  - determining whether it holds the information,
  - 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.
16. 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 in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency (EA/2007/0004)*, the Commissioner considers that any estimate must be “*sensible, realistic and supported by cogent evidence*”<sup>1</sup>. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
17. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether there is a public interest in the disclosure of the information.
18. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

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

**Would the cost of compliance exceed the appropriate limit?**

19. In determining whether Northumbria Police has correctly applied section 12 of the FOIA in this case, the Commissioner asked Northumbria Police, with reference to the four activities above, to provide a detailed estimate of the time/cost it would take for it to provide the information, to clarify whether a sampling exercise has been undertaken and to confirm that the estimate has been based upon the quickest method for gathering the information.
20. The Commissioner also asked Northumbria Police, when providing these calculations, to include a description of the nature of work that would need to be undertaken, explaining that an estimate for the purposes of section 12 has to be "reasonable". Thus, it is not sufficient for a public authority to simply assert that the appropriate limit has been met; rather the estimate should be realistic, sensible and supported by cogent evidence.
21. Northumbria Police explained that when the complainant made the request, it started searching to locate the information. It explained that, as the review started, it became apparent that it would exceed the appropriate limit.
22. Northumbria Police further advised that the initial sample of 55 emails found that there was a substantial amount of data held, included in various strings of emails, spread across various folders, with different conversation strings and other attachments. These would need to be manually reviewed to extract the data the complainant had requested.
23. Northumbria Police stated to the Commissioner that there were an initial 55 emails located, that were stored within an operational folder. However, the information within the folder is not the complete list of documents that relate to the request.
24. From the scoping exercise that Northumbria Police carried out, it explained that it took on average 25 minutes to fully scan each document and when multiplied by the initial 55 emails, it equates to over 23 hours to complete the exercise.
25. The Commissioner asked Northumbria Police to clarify what it meant by "document"; did it mean individual documents, chains of emails etc.
26. Northumbria Police explained that within the 55 emails included in the scoping exercise, there were attachments to the emails, which contained both additional emails and various documents. Additionally, it added that the time it has estimated is a conservative estimate and to provide

the information in an accurate format would require it to not only assess but to also cross reference to ensure duplication was minimised.

27. Northumbria Police also confirmed that this initial search excluded the information held by the Chief Inspector; it advised that the Chief Inspector had confirmed that they hold a similar volume of information. As such, there was no requirement to carry out further review of the data held by his office, as it would exceed the appropriate limit.
28. The Commissioner also asked Northumbria Police to confirm the exact number of emails that the Chief Inspector holds in relation to the request. Northumbria Police advised that they have 23 stored emails and that each email contains attachments which include both other emails and operationally sensitive documents.
29. Northumbria Police also explained to the Commissioner that a consultation has taken place with other staff involved, who also assisted with the internal review of this request, and a significant amount of emails were located in relation to the matter, not just those held by the Chief Inspector. The Police went on to explain that an assessment was carried out and for the purposes of the review, it showed that 10 hours and 20 minutes were utilised in checking 12 emails; it became evident at this point that the assessment initially undertaken reflected the issues and the complexity with the task and therefore, section 12 of the FOIA was applied to the request.
30. Due to the above, even if the estimate provided were to take half the amount of time to look through each document, it would still equate to a time that is in excess of the cost limit under the FOIA, when both the documents that had been sampled and those held by the Chief Inspector are combined.
31. Northumbria Police advised the Commissioner that it could have restricted its searches to the Chief Inspector's inbox, but it determined that this would not provide a response to the request for *all* correspondence, agreements made and concessions made by Northumbria Police and, as such, it was determined that the step could not be taken, as to do so would render the response incomplete and therefore inappropriate. It also advised that, as explained above regarding the time taken for the initial searches, due to the Chief Inspector advising they hold a similar amount of information, it would mean that section 12 of the FOIA would be applicable solely on that data alone.
32. Having considered the estimates provided, the Commissioner finds that they are realistic and reasonable. He therefore accepts that for Northumbria Police to comply with the request, it would exceed the

appropriate limit and that it was entitled to rely on section 12(1) of the FOIA to refuse the request.

### **Section 16 – advice and assistance**

33. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request where it would be reasonable to do so. 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.
34. The Commissioner notes that Northumbria Police advised the complainant originally that they could see no reasonable way in which the request could be refined. However, within the internal review, Northumbria Police advised the complainant that they could make a separate request, that asks solely for the emails of the Chief Inspector. It advised that by doing this, it would not answer the original questions asked by the complainant in their initial request and that different exemptions may apply.
35. The Commissioner is satisfied that Northumbria Police has complied with its obligations under section 16(1) of the FOIA.

## Right of appeal

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36. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**