

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

### **Decision notice**

**Date:** 1 March 2023

**Public Authority:** Chief Constable of Dyfed Powys Police  
**Address:** Police Headquarters  
PO box 99  
Llangunnor  
Carmarthen  
SA31 2PF

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

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1. The complainant has requested information from Dyfed Powys Police ("the public authority") regarding the number of times it received a completed GP pro-forma direct from a specific surgery for a shotgun license renewal since January 2021.
2. The Commissioner's decision is that the public authority was entitled to apply section 12(2) of FOIA and he is satisfied that it has met its obligations under section 16 of FOIA to offer advice and assistance. However, as the public authority failed to respond to the request within 20 working days, it has breached section 10(1) of FOIA.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. On 1 May 2022, the complainant wrote to the public authority and requested information in the following terms:

"I would like to know the exact number of times that the Dyfed Powys Police firearms licensing department have received a completed GP pro-forma DIRECT from Tregaron Surgery since January 2021 for a shotgun

licence renewal. Normally the completed GP pro-forma is given back to the applicant who then has to forward it to the firearms dept. It is, I believe, very unusual for a Doctor's surgery to actually send it directly to the police. It is only between Jan 2021 and 1/05/2022 it has to have been sent direct by the surgery to the firearms department".

5. The complainant sent an email to the public authority on 31 May 2022, as they had not received a response to their request. The public authority responded on the same day, advising that there were delays due to a reduced number of staff and an increase in the number of FOIA requests.
6. On 13 June 2022, the public authority responded to the complainant's request, advising that it was relying on under section 12(2) of FOIA to refuse the request.
7. Following an internal review the public authority wrote to the complainant on 22 June 2022. It stated that it upheld its original position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 4 June 2022 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this complaint is to determine if the public authority has correctly cited section 12(2) of FOIA. The Commissioner will also consider whether the public authority met its obligation to offer advice and assistance under section 16 of FOIA.

### **Reasons for decision**

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#### **Section 12(2)**

10. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
11. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.

12. The "appropriate limit" is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. Therefore, the "appropriate limit" for Dyfed Powys Police is £450.
13. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 18 hours for the public authority to deal with this request.
14. Where section 12(2) is relied upon, Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following activity:
  - determining whether the information is held.
15. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of "Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004", the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
16. The task for the Commissioner here is to determine whether the cost estimate by the public authority was reasonable. If it was, then section 12(2) was engaged and the public authority was not obliged to confirm or deny whether the requested information was held. In the Commissioner's view, section 12(2) will only be relevant where the public authority is entirely unaware of whether it holds any recorded information within the scope of the request.
17. Where a public authority claims that section 12 of 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.

**Would confirmation or denial exceed the appropriate limit?**

18. As is the practice in a case in which the public authority has cited the cost limit under section 12(2) of FOIA, the Commissioner asked the public authority to provide a more detailed estimate of the time and cost of determining whether the requested information was held.
19. The public authority explained that there are 2782 applications recorded and that it would require individual interrogation of each record to ascertain if there is any information relevant to the complainant's request.

20. The public authority determined that it would take approximately five minutes to ascertain the surgery and then view the notes to see if the GP letter/pro forma was submitted separately.
21. The public authority advised that using the above figures, it would take 231.8 hours to determine whether or not it held information within scope of the request, which exceeds the maximum limit of 18 hours by a significant and clear margin.
22. Within the public authority's response to the Commissioner, it explained how it had contacted different departments to determine if the requested information could be easily retrieved. However, upon review of each of these explanations, the Commissioner is satisfied that the public authority would not be able to easily retrieve the requested information.
23. The Commissioner notes that the complainant does not consider that the public authority would not be able to locate such information. Whilst the complainant may consider that it would be easy to retrieve the information, it does not necessarily mean that it will be able to be done. This is due to a number of factors, including the types of systems that are used to store the information.
24. The Commissioner's overall conclusion is that the public authority has estimated reasonably that to confirm or deny whether it holds any information within the scope of the complainant's request would exceed the appropriate cost limit. Therefore, the public authority was correct to apply section 12(2) of FOIA to the complainant's request.

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

25. Section 16(1) of FOIA provides that a public authority should give reasonable 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 practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1). The FOIA code of practice states that, where public authorities have relied on section 12 to refuse a request, they should:

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

“provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the cost limit”.

26. In the original response to the complainant, the public authority advised the complainant that they may wish to refine the request so that it reduces the timeframe to fall within the 18 hours time limit. However, it also explained to the complainant that it is unlikely that the request will fall under 18 hours as the same method and format would need to be used.
27. The Commissioner is satisfied that the public authority met its obligation under section 16 of FOIA.

### **Section 10 – Time for compliance**

28. Section 10(1) of FOIA requires the public authority to respond to the request within 20 working days following the date of receipt.
29. In this case, the complainant made their request on 1 May 2022 and did not receive a response until 13 June 2022.
30. By failing to respond to the request within the statutory time period, the public authority has breached section 10(1) of FOIA.

## Right of appeal

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31. 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)

32. 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.
33. 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**