

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

### **Decision notice**

**Date:** 23 May 2023

**Public Authority:** Chief Constable of Hampshire Constabulary  
**Address:** Tower Street  
Winchester  
SO23 8ZD

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

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1. The complainant has requested information from Hampshire Constabulary (“the public authority”) regarding Digital Processing Notices. The public authority refused to provide the information, citing section 12 of FOIA.
2. The Commissioner’s decision is that the public authority was entitled to rely on section 12(1) when refusing this request. The Commissioner is also satisfied that the public authority has complied with its duty under section 16 of FOIA. However, the public authority failed to respond to the request within 20 working days and, as such, 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 29 December 2022, the complainant wrote to the public authority and requested information in the following terms:  
“1) What date were data protection notices (DPN A, B, C) brought in to effect and when did the constabulary start to issue such notices to suspects, witnesses and aggrieved parties.

- 2) How many Data Protection Notices were issued for the seizure of mobile telephones for suspects from 01/06/2020 and 30/09/2020.”
5. The public authority responded on 2 February 2023 asking for the complainant to clarify if they meant “Digital Processing Notices”. The complainant confirmed on the same date that they meant Digital Processing Notices.
  6. On 9 February 2023, the public authority responded to the request, citing section 12 of FOIA – cost of compliance exceeds the appropriate amount.
  7. Following an internal review the public authority wrote to the complainant on 6 April 2023. It stated that it upheld its original position.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 7 April 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of the complaint is to determine if the public authority was correct to rely on section 12 of FOIA to refuse to provide the requested information.

### **Reasons for decision**

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#### **Section 12 – cost of compliance exceeds the appropriate amount**

10. Section 12(1) of 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.”

11. This limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations) as £600 for central government departments and £450 for all other public authorities. This means that the appropriate limit will be exceeded if it would require more than 24 hours work for central government, legislative bodies and the armed forces and 18 hours work for all other public authorities. In the present case the appropriate cost limit is £450 and the appropriate time limit is 18 hours

12. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in carrying out the following permitted activities in complying with the request and:
  - determining whether the information is held;
  - 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.
13. Section 12 provides that public authorities are only required to estimate the cost of compliance with a request. The Commissioner considers that the estimate must be reasonable and has followed the approach set out by the Information Tribunal in *Randall v Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2006/004, 30 October 2007) which states that a reasonable estimate is one that is "sensible, realistic and supported by cogent evidence".
14. The Commissioner must therefore consider whether any estimate provided by the public authority is reasonable. If it is, then section 12 is engaged and the public authority does not have to comply with the request.
15. The public authority has explained that the requested information is not held in an easily retrievable format and that it is not held centrally in one place.
16. The public authority went on to explain that the cost of locating and retrieving the information would exceed the appropriate amount.
17. The public authority explained that the notices are dealt with by officers in connection with relevant crime occurrences and that they would be recorded on individual occurrences, which is not a searchable function on its system. Therefore, all cases would need to be manually searched.
18. The public authority explained to the Commissioner that between the timeframe that the complainant has requested, there were 51,741 crime occurrences which could have resulted in a seizure of a mobile telephone. It explained that it does not have any mechanism in place to undertake an automated search. The public authority also advised that the data would be held on a specific log, but this is not searchable and would need a manual review.
19. The public authority advised that it would only be able to provide the data by reviewing each crime occurrence. It went on to explain that on

average it would take 10 minutes to conduct a reasonable search of each occurrence in an attempt to extract the data requested.

20. The public authority also pointed out to the Commissioner that even if it were to take only 1 minute to search each occurrence, it would still exceed the appropriate limit set out in FOIA.
21. The Commissioner accepts that due to the amount of occurrences, and the method of retrieval necessitating a manual search, that the estimates provided by the public authority are reasonable and would exceed the appropriate limit by a significant margin. As such, the Commissioner is satisfied that section 12(1) of FOIA is engaged and the public authority was entitled to refuse to comply with the request.

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

22. When refusing a request under section 12, a public authority needs to offer meaningful advice and assistance to the complainant where reasonable. The aim of this advice and assistance is to help the complainant refine their request to one that might be able to be dealt with within the appropriate limit
23. Within the public authorities internal review response, it advised the complainant that they may wish to reduce the scope of the specific request to point 1.
24. The Commissioner is satisfied that the public authority has provided sufficient advise and assistance to the complainant and therefore, it has complied with section 16 of FOIA.

### **Section 10 (1) – time for compliance**

25. Section 1(1) of FOIA states that:

“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.”
26. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

27. The public authority failed to provide a response within 20 working days and, as such, it breached section 10(1) of FOIA.

## Right of appeal

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28. 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)

29. 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.
30. 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**