

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2023

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 various pieces of information about officers and staff at two named police stations, from the Metropolitan Police Service (the "MPS"). The MPS has advised that to ascertain whether or not it holds the requested information would exceed the cost limit, citing section 12(2) of FOIA.
2. The Commissioner's decision is that it was entitled to do so. No steps are required.

Request and response

3. On 26 November 2021, the complainant wrote to the MPS and requested the following information:

"I write seeking the following information with regards to Forest Gate Police, of 350 Romford Road, London, E7 and Plaistow Police Stations of 444 Berking Road, E13 8HJ.

For the last five (5) years (from Jan 2016) please provide the following information:

1. The number of discrimination complaints (victimisation, harassment, race, sex etc.) received against officers and staff at the above stations.

2. What are the ranks of the officers and staff involved in the above complaints?
 3. What are the complainants' protected characteristics as set out in the Equality Act 2010 (the Act) (race, age, sex, religion etc.)
 4. Please provide a breakdown of the complaints that you have upheld pursuant to the protected characteristics under the Act?
 5. Please provide a breakdown of the complaints that you have dismissed pursuant to the protected characteristics under the Act?
 6. Has there been any Equality Impact Assessment, what was the result and provide data.
 7. As a result of upholding the complaints, has there been any Equality and Diversity training for these officers involved and generally.
 8. How many officers have been involved in misconduct and or gross misconduct hearings? Please provide data.
 9. Of those above, how many resulted in employment tribunal proceedings? Please state the officers' ranks and outcomes of the cases.
 10. How many of the employment tribunal cases were in the public domain and considered to be high profile. Please provide the names of the high profile cases referred to above.
 11. Of the recorded complaints, how many officers received sanctions because of race discrimination complaints made against them.
 12. How many officers have resigned from the service because of their involvement in high profile cases? Please state the officers' ranks.
 13. Please state the protected characteristics of the complainants bringing misfeasance cases.
 14. How many officers have been prosecuted for misfeasance in public office? Please state the officers' ranks.
 15. How many officers were involved in misfeasance in public office case [sic] brought in the county or High Court? (a) Please state the nature of the misfeasance (b) please state the officers' ranks.
 16. In relation to the misfeasance cases referred to above, (a) please state how many cases were dismissed (b) upheld.
 17. In successful misfeasance cases against Police, the number of officers who resigned and their ranks...".
4. On 29 January 2022, the MPS responded. It advised the complainant that to ascertain whether or not it held the requested information would exceed the appropriate limit, citing section 12(2) of FOIA. It also sought clarification from the complainant regarding what was meant by 'high profile' in respect of part (10) of the request.

5. The complainant requested an internal review on 19 April 2022. They made no reference to the clarification sought, saying:

"I am not satisfied with your response to my FOI as set out in your letter of 29th January 2022.

I ask that you review your decision refusing me access to information sort under FOIA on the basis that it was exempt information under section 12(2) of FOIA and that it exceeds the applicable number of hours to search of [sic] the information".

6. The MPS provided an internal review on 23 May 2022. Tt maintained its position.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They asked the Commissioner to consider the application of section 12(2) to the request. The Commissioner will consider this below. He has made his decision on the documents provided without the need for a further investigation.
8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

Aggregation of requests

9. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12. In the present case, this means that there are several requests to be considered. However, where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Fees Regulations, provided those requests are received by the public authority within any period of

sixty consecutive working days. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.

10. In the Commissioner's guidance¹ on exceeding the cost limits, he explains that:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested".

11. The Fees Regulations wording of "**relate, to any extent, to the same or similar information**" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
12. Although the MPS did not address this point, having reviewed the wording of the complainant's request, the Commissioner is satisfied that there is an overarching theme. This is because the individual questions all relate to information on complaints and disciplinary matters, at two specific police stations. Therefore, the MPS was entitled to aggregate the costs of dealing with each question.
13. 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. 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.

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

14. The appropriate limit is set at £450 for the MPS by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
15. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour (giving an effective time limit of 18 hours) and specify the tasks that can be taken into account when forming a cost estimate as follows:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
16. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the MPS was reasonable. If it was, then section 12(2) was engaged and the MPS was not obliged to confirm or deny whether the requested information was held.
17. In respect of the searches for information which it has undertaken, the MPS advised the complainant:

“Part 1: We are unable to breakdown data by the specific police stations requested. There are approximately 2,700 discrimination complaints that cover the requested time. To ascertain whether any of the employees were working from the named police stations we would have to read these reports. We could try and cut down the number that needed to be read by focusing on the incident location, however it is entirely feasible for an employee to work from a police station in one part of London and receive a complaint from another. This would therefore produce unreliable results. It should also be noted that this information may also not necessarily be recorded on Centurion (MPS Public Complaints and Misconduct Database) and where it is, it may not explicitly reference the police stations.

In addition, Q6 is not recorded within Centurion, we would need to review each case at detail level to establish if this was recorded on other systems.

Q12 – We do not hold this information on Centurion. We would need to extract data from our HR system for all officers in the MPS who have resigned and would need to read at record level the reasons if any recorded for the resignation.

We therefore estimate that the cost of complying with this request would exceed the appropriate limit ...”.

18. At internal review, the MPS further explained:

“To retrieve and collate some of the information you have requested would exceed the cost threshold ... because there is not an automatic means for searching for all of the information you require. Both electronic and paper records would have to be searched and cross referenced. The information you seek is not recorded in the format you have requested.

... Your request is very broad and would require the retrieval, review and collation of many different types of records (misconduct records, officer duty records, employment tribunal records, training records, officer service records etc).

Misconduct allegations are recorded by offence type / person / MPS Police area. Allegations are not recorded by specific location in an easily retrievable format...”.

19. The Commissioner has not required a more detailed breakdown from the MPS based on its statement that there are approximately 2,700 discrimination complaints covering the specified time period. Even were it only to take one minute to look at each of these to determine whether or not it involved an officer / member of staff that had been based at one of the two police stations (something which in reality would be likely to take considerably longer), this action on its own would take 45 hours, thereby significantly exceeding the time limit. Additional work would then be necessary in order to respond to the other parts of the request.
20. Having considered the estimate above, and with a lack of any argument to the contrary from the complainant, the Commissioner considers this estimate to be a reasonable one. The Commissioner therefore concludes that section 12(2) is engaged and the MPS was not obliged to confirm or deny holding any of this information.

Section 16 – Advice and assistance

21. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request.
22. In general, where section 12 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.
23. In this case, the MPS has explained to the complainant how the information is held and why confirmation or denial would exceed the cost limit. In its refusal notice it suggested:

“Subject to any FOI exemptions, an alternative would be focus [sic] on the incident location of the complaints. That is information at BOCU level is available within Centurion from 2018.

Please note that information for KG (Barking & Dagenham), KD (Havering) and JI (Redbridge) could be supplied but grouped under the EA (East Area) Bracket and it would be possible to answer for East Area only questions: 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16 and 17 using this method, although that would cover the entire East Area as opposed to two individual police stations and would not capture complaints made elsewhere in London”.

24. Although it has been unable to assist with narrowing the request sufficiently to allow disclosure of any information, the Commissioner recognises that, on this occasion, this has not been practicable. The policing systems have been designed for policing purposes and the information that the complainant requires is spread across various systems and it is not readily accessible, as it is not something which is required by the MPS in the format that has been requested.
25. The Commissioner considers that the MPS has tried to explain how it holds its information and has thereby provide advice and assistance to the complainant. Accordingly, he finds that it has complied with the duty under section 16.

Right of appeal

26. 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

27. 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.
28. 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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