

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 April 2024

Public Authority: Chief Constable of Merseyside Police
Address: Merseyside Police HQ
15 Cazneau Street
Liverpool
L3 3AN

Decision (including any steps ordered)

1. The complainant has requested information regarding outbound calls made by Merseyside Police. Merseyside Police relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that Merseyside Police was entitled to rely on section 12(1) of FOIA to refuse the request. The Commissioner also finds that Merseyside Police did not comply with its section 16 obligation to offer advice and assistance.
3. The Commissioner requires Merseyside Police to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with appropriate advice and assistance to help them submit a request which may potentially fall within the appropriate limit.
4. Merseyside Police must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 13 September 2023, the complainant wrote to Merseyside Police and requested information in the following terms:

“Under the Freedom of Information Act, I would like to request the following information:

A spreadsheet containing a redacted list of outbound phone calls made by employees of Merseyside Police, using Merseyside Police equipment, over the past three financial or calendar years which includes information (where available or disclosable) such as: (a) whether the call went answered or unanswered, (b) if the call was answered, what was the duration of the phone call, (c) the type/category of employee at Merseyside Police from whose equipment this outbound phone call was made. Any readily retrievable summary or descriptive statistics relating to these phone calls would also be appreciated.”

6. Merseyside Police responded on 9 October 2023 and advised that providing the requested information would exceed the cost limit, and was therefore exempt under section 12(1).

7. On 9 October 2023, in an attempt to bring the request within the cost limit, the complainant revised their request in the following terms;

“I understand that from it that it would take up to 7 days to retrieve information for the past 3 calendar or financial years. Please can you treat this as a new FOI request for the same information but for the past 6 months.”

8. Merseyside Police provided a further response on 31 October 2023, advising that the request would still exceed the cost limit.

9. The complainant refined their request again on 3 November 2023 in the following terms;

“Thanks for your response which states the past 6 months of data would still exceed the cost limit. Given your points around personal data exemptions potentially applying, I’d like to revise the request further for just the past month. Please treat this as a request for information for:

A spreadsheet containing a redacted list of outbound phone calls made by employees of Merseyside Police, using Merseyside Police equipment, over the past 1 month which includes information (where available or disclosable) such as:

(a) whether the call went answered or unanswered,

Any readily retrievable summary or descriptive statistics relating to these phone calls would also be appreciated.”

10. On 4 December 2023, Merseyside Police responded. Despite the complainant’s attempt to reduce the cost/time of the request, Merseyside Police relied on section 12(1) of FOIA to refuse the request – a position it upheld following an internal review.

Scope of the case

11. The Commissioner’s investigation will focus on the most recent refined request for information, which was made on 3 November 2023. He will consider whether Merseyside Police was entitled to rely on section 12(1) to refuse the request and whether it provided appropriate advice and assistance in accordance with section 16 of FOIA.

Reasons for decision

Section 12 – cost of compliance

12. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
13. Section 12(1) of FOIA 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” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”)
14. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for Merseyside Police is £450.
15. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for Merseyside Police.
16. 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 permitted activities in complying with the request:

- 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.
17. 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. The Commissioner considers that any estimate must be sensible, realistic and supported by cogent evidence. 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.
18. 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 FOIA to consider whether there is a public interest in the disclosure of the information.
19. 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 FOIA.

The complainant's position

20. The complainant explained that despite making multiple refined requests for the information, Merseyside Police maintained that providing the requested information would exceed the cost limit.
21. The complainant advised that Merseyside Police had indicated that even providing a day's worth of data would likely exceed the cost limit. The complainant advised that they found this difficult to believe.
22. The complainant also stated that there was a natural interest in the requested information, as it would demonstrate the productivity of staff/employee time.

Merseyside Police's position

23. Merseyside Police advised the Commissioner that it uses six different systems for telephone calls and each system would need consulting in order to locate and extract all the requested information.

24. Merseyside Police advised the Commissioner that it had conducted a sample exercise on one of the systems it uses, Skype. It advised the Commissioner that Skype call data is recorded in the "ucentric" call logging system, all reports on ucentric are limited to a 20,000 record limit.
25. Merseyside Police explained on average it makes 2,000 calls per hour on the Skype system, so it would need to run 3 reports for each day. In order to provide a month's worth of data for Skype, it would be required to run 90 separate reports to return 30 days' worth of data.
26. It estimated that it would take 5 minutes for each report to be completed, which would equate to 7.5 hours for the 90 reports to be created.
27. Once the reports had been created, Merseyside Police would need to compile the reports into a single list manually, as the information does not come out in a readily accessible format. It stated this would require approximately 700,000 records being compiled into a single list.
28. Merseyside Police explained that all reports would need to be reviewed in order to remove any personal data and to determine whether a call was answered/unanswered as this is not logged on the system. It explained that it would take a further estimated 6 hours to compile the information and a further 5 hours to redact and review the information.
29. Merseyside Police advised that, as previously mentioned, Skype is one of six systems used and the remaining 5 would need to be assessed in order to answer the request. All systems have a different logging and reporting system which would require different methods to compile the information.
30. Merseyside Police explained that without including the time for redaction and review, it would take 7.5 hours to extract one month's data from one system and 6 hours to compile the information into a single list. This would amount to 13.5 hours worth of work for one system and 81 hours for all 6 systems.
31. Merseyside Police concluded that this estimate was based on the fastest method available to retrieve and extract the requested information.

The Commissioner's view

32. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
33. Merseyside Police have clearly demonstrated that there are a large number of outbound telephone calls made within a day, and in order to

extract the requested information would require a large amount of work which would clearly exceed the appropriate limit.

34. The Commissioner is satisfied that the estimates provided are reasonable considering the amount of data which would need to be located and extracted. The Commissioner reminds Merseyside Police, however, that it cannot include the time taken for redactions when citing section 12. Nevertheless, even without the time for redactions, the request is still very broad and would far exceed the cost limit to answer.
35. The Commissioner's decision is that Merseyside Police was entitled to rely on section 12(1) of FOIA to refuse the request.

Procedural matters

Section 16 – advice and assistance

36. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
37. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
38. In this case, Merseyside Police does not appear to have provided any meaningful advice and assistance to the complainant – or explained why it is unable to do so.
39. The Commissioner is therefore satisfied that Merseyside Police did not comply with section 16 of FOIA when dealing with this request.
40. Merseyside Police must now provide reasonable advice and assistance, to the complainant, to help them refine their request.

Right of appeal

41. 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

42. 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.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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