

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2024

Public Authority: Chief Constable of Essex Police
Address: Essex Police Headquarters
PO Box 2
Chelmsford
CM2 6DA

Decision (including any steps ordered)

1. The complainant requested information about the number of officers on duty on a particular Bank Holiday night shift. Essex Police refused to comply with the request, citing section 12(1) (cost of compliance) of FOIA.
2. The Commissioner's decision is that Essex Police is entitled to rely on section 12(1) to refuse to comply with the request. He also finds that Essex Police complied with its obligations under section 16 of FOIA to offer advice and assistance.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 1 July 2023, following earlier correspondence, the complainant wrote to Essex Police and requested information in the following terms:

"So, please can you provide data for the following amended request:

1. The total number of response officers on duty in Essex during the night shift of **May 8, 2023**.
2. The total number of supporting officers (e.g. those in control rooms, custody suites and other facilities) on duty in Essex during the night shift of **May 8, 2023**".
5. Essex Police responded on 12 July 2023, citing section 12(1) (cost of compliance) of FOIA.
6. Following an internal review, Essex Police wrote to the complainant on 20 December 2023 maintaining its application of section 12(1).

Scope of the case

7. The complainant disputes the application of section 12. They told Essex Police that other police forces in England "have swiftly provided" them with the exact same data they have requested from Essex Police.
8. The analysis below considers Essex Police's application of section 12 of FOIA to the requested information.

Reasons for decision

Section 12 cost of compliance

9. 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").
10. Under section 12(3), different public authorities can have different cost limits. For some, generally central government, the limit is £600. For all other public authorities, the limit is £450. The cost limit in this case is £450.
11. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour. This means that Essex Police may refuse the request for information under consideration if it estimates that it will take longer than 18 hours to comply with it.
12. 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.
13. 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 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".
14. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by Essex Police was reasonable; in other words whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.
15. 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.

Would the cost of compliance exceed the appropriate limit?

16. Essex Police told the complainant that, as it was unable to provide a data report in respect of the date of 8 May 2023, each Officer personnel rota file would need to be manually reviewed to determine if individuals were working the night shift that is the subject of the request.
17. In support of its conclusion that it would exceed the time and cost limits under FOIA to establish if the requested information is held, it described "the difficulties and protracted manual reviews and development of comparison reports" that would be required to meet this request.
18. Having conducted an internal review, Essex Police wrote to the complainant, providing more detail, and an estimate, in support of its application of section 12.
19. In its submission to the Commissioner, Essex Police explained further about the inability of its reporting system to provide a report to satisfy

the request and described the steps that would need to be taken to ascertain if an officer was working on the specified night shift. It also confirmed that a sampling exercise had been undertaken.

20. Essex Police told the Commissioner that its system contains the duties of 3,720 officers and that it had taken one minute and 30 seconds to complete the steps required in connection with one officer's duties in one section of the system.
21. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, the Commissioner's role is simply to decide whether the requested information can, or cannot, be provided to a requestor within the appropriate costs limit.
22. In essence, therefore, this case turns on whether the estimate provided by Essex Police was reasonable.
23. The Commissioner recognises that the complainant disputes that Essex Police is unable to respond to the request within the cost and time limit.
24. However, even if Essex Police's estimate of the time taken, per officer, to locate and extract the information was excessive, from the evidence he has seen during the course of his investigation, the Commissioner is satisfied that Essex Police has demonstrated that it would exceed the appropriate limit to locate, retrieve and extract the requested information.
25. Section 12(1) does therefore apply and Essex Police is not required to comply with the request.

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

26. Section 16(1) of FOIA sets out a duty for a public authority to provide advice and assistance to anyone who has made, or is thinking of making, a request for information.
27. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requestor refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.
28. The Commissioner acknowledges that the request in this case was a refined request, the complainant having reduced the scope of their request from each night shift over the last 28 days to a single night shift on a specific date.

29. In the circumstances, the Commissioner considers this is a situation where it is difficult to provide any meaningful advice on how the requester could refine their request further.
30. It follows that he is satisfied that Essex Police met its obligations under section 16 of FOIA.

Right of appeal

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

Website: 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.

Michael Lea
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