

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2024

Public Authority: Northamptonshire Police, Fire and Crime Commissioner

Address: Wiltshire Police Headquarters
London Road
Devizes
Wiltshire
SN10 2DN

Decision (including any steps ordered)

1. The complainant has requested information in respect of the contents of emails.
2. The above public authority ("the public authority") relied on section 12 of FOIA (cost of compliance) to refuse the request.
3. The Commissioner's decision is that the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.
4. The Commissioner also finds that the public authority complied with its section 16 obligation to offer advice and assistance.
5. The Commissioner does not require further steps to be taken.

Request and response

6. On 27 November 2023, the complainant requested information on the following terms:

"Thank you for your response. I'd like to make a follow-up FOI request. With reference to the inboxes and data you've disclosed on the 17th October 2023 in response to my previous FOI request, please can you disclose (redacting and/or applying exemptions where needed) the

contents of the following emails from each of the first 50 inboxes in that list, with each number corresponding to an email in that inbox (assuming 1 is the oldest email in that inbox and higher numbers are more recent). If the number of emails in any inbox listed has decreased such that the email numbers I've cited below are higher than the maximum number held within that inbox at the time, please retrieve the most recent email in that inbox.

1. 8051 (inbox with 57765 emails)
2. 3553 (inbox with 77495 emails)
3. 1736 (inbox with 4007 emails)
4. 717 (inbox with 2169 emails)
5. 8923 (inbox with 72169 emails)
6. 904 (inbox with 1416 emails)
7. 688 (inbox with 723 emails)
8. 9139 (inbox with 13124 emails)
9. 747 (inbox with 42538 emails)
10. 1083 (inbox with 64777 emails)
11. 3625 (inbox with 45086 emails)
12. 3136 (inbox with 5446 emails)
13. 6041 (inbox with 43655 emails)
14. 6588 (inbox with 22654 emails)
15. 8564 (inbox with 14412 emails)
16. 1445 (inbox with 63195 emails)
17. 4602 (inbox with 17675 emails)
18. 3598 (inbox with 11183 emails)
19. 274 (inbox with 861 emails)
20. 1484 (inbox with 1868 emails)
21. 2188 (inbox with 100897 emails)

22. 7823 (inbox with 83463 emails)
23. 7524 (inbox with 1164 emails)
24. 6786 (inbox with 8324 emails)
25. 287 (inbox with 130742 emails)
26. 548 (inbox with 1106 emails)
27. 4262 (inbox with 17211 emails)
28. 6954 (inbox with 19964 emails)
29. 6068 (inbox with 5307 emails)
30. 6006 (inbox with 100606 emails)
31. 6253 (inbox with 12141 emails)
32. 1502 (inbox with 43578 emails)
33. 802 (inbox with 25292 emails)
34. 11 (inbox with 11233 emails)
35. 8913 (inbox with 95677 emails)
36. 3937 (inbox with 5363 emails)
37. 8893 (inbox with 28386 emails)
38. 7811 (inbox with 34068 emails)
39. 2060 (inbox with 15436 emails)
40. 2508 (inbox with 1388 emails)
41. 1358 (inbox with 1897 emails)
42. 1202 (inbox with 21586 emails)
43. 4788 (inbox with 9189 emails)
44. 146 (inbox with 15050 emails)
45. 9921 (inbox with 39852 emails)
46. 8642 (inbox with 31285 emails)
47. 7487 (inbox with 176011 emails)

- 48. 2289 (inbox with 4910 emails)
- 49. 6335 (inbox with 6747 emails)
- 50. 1524 (inbox with 91331 emails)

For awareness, I consider the above to be a request for information defined by electronic locations as referenced by the ICO guidance here: <https://ico.org.uk/for-organisations/foi...>

Please do not hesitate to reach out if any aspect of my request requires clarification.”

- 7. On 29 November 2023, the request was refused on the basis of the cost exemption in section 12 of FOIA. This position was upheld on internal review on 5 February 2024.

Reasons for decision

Section 12 – cost of compliance

- 8. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
- 9. Section 12(1) of the 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. 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 the public authority 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, meaning that section 12(1) effectively imposes a time limit of 18 hours for the public authority to deal with a request.
- 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. 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.
14. 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.
15. 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

16. The complainant is of the view that the public authority has not given a precise enough estimate of the time it would take to comply with the request.

The public authority's position

17. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner expects the public authority to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. Following the Commissioner's request to do a sampling exercise of some of the emails in scope, the public authority carried out a sampling exercise based on five members of staff from across the organisation who were asked to review the request and estimate how long it would take them to provide the information requested. Staff were selected from different teams and departments.

19. The Commissioner has seen the responses from the members of staff and the estimates they have given.
20. Based on the estimates provided by the five members of staff the public authority provided the Commissioner with an average estimate of 30 hours to respond to the request.
21. The public authority further explained that the average estimate:
"does not include the various members of staff who have since left the organisation which would entail spending further time to access dormant accounts on the system."
22. The public authority also explained that Microsoft Outlook:
"can show a total number of items, and the size of those items, within the user account and how many items are in sub folders, such as inbox, deleted and sent. It cannot show a particular 'numbered' email (XXXX of 1000) as Microsoft Outlook does not structure emails in this way."

The Commissioner's view

23. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
24. The Commissioner is satisfied by the public authority's explanation and the estimate provided. The Commissioner is also satisfied that the public authority has carried out a suitable sampling exercise which demonstrates the validity of the estimate.
25. The Commissioner notes that the public authority acknowledged that some of the estimates provided by members of staff might be slightly high and that the public authority adjusted the estimate accordingly.
26. Complying with the request would therefore exceed the cost limit and so the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.

Procedural matters

Section 16 – advice and assistance

27. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.

28. 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.

29. In this case, the public authority informed the requester in its initial response:

“Under Section 16 of the FOIA we are required to consider what advice and assistance we can provide to help you submit a request we may be able to respond to. We would suggest you are more specific about what you require in terms of the information sought and level of details you are requesting from the OPFCC.”

30. The Commissioner is therefore satisfied that the public authority did comply with section 16 of FOIA when dealing with this request.

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.

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