

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 August 2010

Public Authority: Metropolitan Police Service
Address: Public Access Office
20th Floor
Empress State Building
Lillie Road
London
SW6 1TR

Summary

The complainant made a request to the Metropolitan Police Service (“the public authority”) for information about the costs of royal security and protection. The public authority originally neither confirmed nor denied holding the information by virtue of the exemptions at sections 24(2) (national security), 31(3) (law enforcement) and 38(2) (health and safety). This was amended to sections 24(1), 31(1)(a), (b) and (c), and 38(1)(b) at internal review when the public authority confirmed it held relevant information. During the Commissioner’s investigation the public authority applied the provisions of section 12(1) (cost of compliance exceeds appropriate limit).

The Commissioner’s decision is that the public authority was entitled to apply the provisions of section 12(1) albeit belatedly. The public authority was therefore not obliged to comply with the request. The complaint is not upheld.

The public authority’s handling of the request also resulted in a breach of the procedural requirements of the Act as identified in this Notice.

The Commissioner’s role

1. 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 the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. According to the public authority's own website¹:

"Specialist Operations is part of the Metropolitan Police Service and is divided into three sections known as commands. Within these three commands, there are seven units whose roles are to help keep safe people who live in, work in and visit London".

3. The website goes on to explain that one of these command units is "Protection Command" and that "Royalty Protection" falls within this unit. This is described as follows:

"Royalty Protection (SO14) provides protection of the monarch and other members of the royal family. This unit us[sic] divided into Residential Protection, Personal and Close Protection and the Special Escort Group who provide mobile protection".

4. SO14 is listed as having the following responsibilities.

- Personal protection for the Royal Family, both nationally and internationally.
- Protecting royal residences in London, Windsor and Scotland.
- Protecting members of the public who visit royal residences.
- 24-hour uniform security and protection operations at some royal residences.
- Personal protection for European Royal Families visiting the UK.
- Mobile protection for protected persons and related property, high risk prisoners and vulnerable property within London and for cross-border operations.
- Planning and co-ordinating joint protection operations.

The Request

5. On 8 April 2009 the complainant made a request for the following information:

¹ <http://www.met.police.uk/so/index.htm>

"Under the terms of the Freedom of Information Act I am writing to ask for information regarding the cost of security for the royal family.

Specifically I would like to know:

How much did the Metropolitan Police spend in total on royal security and protection in the most recent financial year (2008/2009)?".

6. On 13 May 2009 the public authority sent its response. It refused to confirm or deny that it held any information citing the exemptions at sections 24(2), 31(3) and 38(2). The complainant requested an internal review on 14 May 2009.
7. On 30 July 2009 the public authority advised the complainant that its response was still under consideration.
8. In a telephone conversation on 11 August 2009 the public authority confirmed with the complainant that by '*royal security and protection*' he specifically required the total cost incurred by SO14 Royalty Protection.
9. Following interim correspondence, on 13 August 2009 the public authority sent its response to the internal review. It set aside its original decision to neither confirm nor deny holding the information and confirmed that it did hold it. However, it stated that the information was exempt under sections 24(1), 31(1)(a), (b) and (c), and 38(1)(b).
10. During the course of the Commissioner's investigation the public authority changed its reliance on these exemptions by citing section 12(1) instead. It advised the complainant accordingly on 15 March 2010.

The Investigation

Scope of the case

11. On 23 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He stated:

"There is absolutely no reason to believe, as the Police have implied, that the release of the total policing bill for the royal family could possibly increase the risk of harm to any individual or to national security. I have only asked for the total cost, and not for officer numbers, locations or any other details. I therefore cannot see how it is possible that any potential criminals could gain advantage by knowing merely the amount spent over a whole year, and to suggest they could seems quite ridiculous".

12. During the course of the Commissioner's investigation, as a direct result of work it was undertaking for a separate case the Commissioner was investigating, the public authority changed its position. It found that to provide the information requested would exceed the appropriate limit in section 12 of the Act; it wrote to the complainant to advise him accordingly on 15 March 2010.
13. The Commissioner wrote to the complainant on 17 March 2010 to ask whether or not he accepted the public authority's latest position. On 30 March 2010 the Commissioner chased a response.
14. On 1 April 2010 the complainant responded. He stated:

"I would like to put on record how disappointed I am with this response from the Met. It does seem that, after a year of refusing to supply this information based on their claim it would be a threat to national security and the security of the individuals involved, the Met is now significantly moving the goalposts by claiming it would be too arduous to work out the total cost anyway.

I find it difficult to accept it would take so long for an individual to retrieve the relevant information and can only conclude the Met is being unreasonable in what it includes in its estimated 2.5 days of work.

Given the ongoing blocking tactics to date in regards to this matter, I must question whether this is anything more than another attempt to stall release of the information by the Met. I would ask the ICO to investigate whether or not the Met are approaching this in the most efficient and effective manner and what work they suggest is involved that means it would take more than two and half days to produce the requested information.

For these reasons, I am asking the ICO to continue with this case and make a ruling. I would encourage the ICO to investigate

further the layout of the Met's SO14 budget and ask for this information to be released in full".

15. The Commissioner has therefore considered whether or not the public authority was correct to cite the appropriate limit in relation to this information request. He would here also note that, as mentioned above, when dealing with a similar information request the public authority first became aware of the issue of costs in compliance. Once it became apparent in the other case, the public authority then provided an explanation to the complainant in this case.

Chronology

16. On 4 February 2010 the Commissioner wrote to the complainant to advise him that he was commencing his investigation.
17. On 8 February 2010 the Commissioner commenced his enquiries with the public authority.
18. As a result of a separate investigation, which was ongoing immediately prior to the commencement of this investigation, the public authority became aware that to provide the information requested in both that case and this one would exceed the appropriate limit. As a result of this, the public authority wrote to the complainant to explain the situation on 15 March 2010.
19. On 17 March 2010 the Commissioner asked the complainant whether or not he accepted this response.
20. On 1 April 2010, as shown above, the complainant responded. He said that he did not accept the public authority's position regarding costs and that he still wished the Commissioner to investigate his case.

Analysis

Exemptions

Section 12 – cost of compliance

21. During the course of the investigation, the public authority first stated that it wished to apply the exemption in section 12 of the Act. Section 12 removes the obligation on public authorities to comply with section 1 of the Act where the estimated cost of compliance with either part of that section would exceed what is known as "the appropriate limit".

This limit is set by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”). For non-central government public authorities such as the one in this case the appropriate limit is £450 (which can be calculated as 18 hours of work because an hour is charged at a standard rate of £25).

22. Section 17 sets out what details public authorities are required to provide as regards their reasoning where they refuse a request (section 17 is recorded in full in a Legal Annex to this Notice). By virtue of section 17(1), public authorities are required to set out precise details as to which element of which exemption they seek to rely on and why they believe they can do so. However, a public authority is not obliged to set out such detail where it seeks to rely on section 12. Section 17(5) merely requires a public authority to state that it is relying on section 12 where it believes it has a basis for doing so. The practical consequence of this is that a public authority is not, strictly speaking, formally obliged to provide much detail as to why it believes section 12 applies.
23. However, a public authority is obliged under section 16 to provide complainants with reasonable advice and assistance in accordance with the section 45 code of practice. More detailed analysis of this requirement is set out later in this Notice but the Commissioner would note at this stage that the section 45 code of practice includes recommendations as to good practice for engaging with a requester where a public authority seeks to rely on section 12 as a basis for refusal of their request.
24. In this case, the public authority applied section 12 during the course of the Commissioner’s investigation. Where a public authority has not referred to a particular exemption when refusing a request for information the Commissioner may exercise his discretion and decide whether, in the circumstances of the case, it is appropriate to take the exemption into account. Having considered the request, and bearing in mind that the issue of costs only became apparent when dealing with a similar information request, the Commissioner is satisfied that it was appropriate for the public authority to have cited costs in respect of this request. He further notes that, once it had become aware of the costs issue, the public authority wrote to the complainant to explain its change of position.
25. Having analysed the correspondence, the Commissioner believes that subsection (1) of section 12 is relevant to this case. This removes the public authority’s obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested

information would exceed the appropriate limit, as defined by the Fees Regulations.

Would compliance exceed the appropriate limit?

26. Having previously clarified with the complainant what he required when it sent him its internal review, i.e. the total cost incurred by SO14 Royalty Protection for the most recent financial year, the public authority advised the complaint on 15 March 2010:

"As I mentioned in our telephone conversation of 15/03/10, following discussion with the Information Commissioner's Office, the MPS will be withdrawing its reliance on the exemptions 24(1), 31(1)(a)(b)(c) and 38(1)(b) which were cited in the previous responses to you. This is because recent work undertaken in respect of a very similar case (also being dealt with in consultation with the ICO), has shown that it would exceed the £450/18 hour cost threshold set out in the Fees Regulations to retrieve the information you have requested. Section 12(1) of the Freedom of Information Act is therefore engaged in respect of the requested information. Full details of this section of the Act and a formal refusal notice for the information, are included ...".

27. It provided the breakdown of SO14 duties, as shown at paragraph 4 above, and went on to explain that SO14 was responsible for other protection duties as well as those for our royal family. These 'non-royal family' duties include protecting members of the public who visit royal residences, personal protection for European Royal Families visiting the UK, and planning and co-ordinating joint protection operations.

28. The public authority went on to explain to the complainant that:

"The SO14 budget, and the subsequent amount spent by SO14, is not sub-divided into allocations for each of the areas of responsibility outlined above [see paragraph 4]. Rather, spends are recorded against "Budget Group Categories" and "General Ledger Codes"; these categories are discussed more fully below, but in brief, they represent particular types of spend, for example, police officer pay, overtime, transport and training. Each of these categories will contain activities relating to Royalty Protection, but will also contain entries relating to the additional protection duties performed by SO14. Actual spends and costs are recorded against these categories throughout the financial year and for comparison at year end. While a total amount spent by SO14 on all activities could be retrieved in this way, it would be necessary to interrogate each of the smaller Categories and

Ledger Codes in order to identify and extract those entries that relate specifically to the security and protection of the Royal Family.

The different types of SO14 spend are identified in the first instance by Budget Group Categories. These categories are:

*Police Pay
Staff Pay
Overtime for officers and staff
External training
Minor works (for example, local repairs, maintenance)
Transport Costs (for example, fleet vehicles, travel and subsistence which includes expenses and overseas travel)
Supply and services
Corporate Costs (for example, corporate transport and maintenance of cars)*

Each Budget Group Category (BCG) is then further sub-divided into General Ledger Codes (GLC), which provide a further tier of information. The following provides an outline of the types and quantities of GLCs:

- The BCG for Police Pay contains 24 separate GLCs. Examples of GLCs within Police Pay include Basic Pay, National Insurance, and Pension Contributions.*
- The BCG for Transport Costs contains 14 separate GLCs. These include Fleet Vehicles, and Travel and Subsistence (which itself includes Expenses Claims).*
- The BCG for Supply and Services contains 33 GLCs. Examples include Officer Uniforms, Staff Uniforms, Stationary, Office supplies, and Photocopying.*

As these categories record information for all SO14 activities, each would be likely to hold information relevant to this request. To provide a total cost, all categories would need to be reviewed to locate and retrieve the costs specifically relating to Royalty Protection. However, for the majority of GLCs, no further level of detail is given, so it is not possible to identify which aspect of the SO14 remit the spend relates to without retrieving the original documentation that supports each entry. Additionally, both Police Pay and Expense Claims are recorded with reference to the name of each individual officer. In order to retrieve relevant information in these cases, officers involved in Royalty Protection

must be identified by name, and all relevant records then retrieved for each individual".

29. The public authority also went on to explain that:

"Under the section 16 duty to assist, I can provide advice as to how your request could be narrowed or re-defined to bring it within the cost threshold. As the description above indicates, while it is not possible to retrieve the specific amount spent on Royalty Protection, it would be possible to retrieve the total amount spent by SO14; this would include both Royalty Protection and the spends for other duties/responsibilities. Should you wish to proceed in this way, the information will be retrieved; it will then be reviewed to determine whether exemptions apply to this information".

30. During the course of his investigation the Commissioner also sought further detail as to how the required searches would exceed the appropriate limit. He specifically enquired as to how long it would take to obtain the required information for any particular officer who was engaged on duties within SO14. He was advised that monthly searches would need to be undertaken for each officer and that this would consist of searches of one computer system for the officer's salary and two systems for the officer's overtime. To interrogate each of the 3 systems for each officer and retrieve the information for a whole year would take about one hour, i.e. 20 minutes per system. The public authority further advised the Commissioner that:

"On an estimate of one hour to retrieve the salary and overtime information for one officer, information for a maximum of 18 SO14 officers only could be [be] retrieved before the cost threshold would be exceeded".

31. The public authority has already advised that in order to retrieve the relevant information in this case it would need to identify officers involved in Royalty Protection by name and then retrieve their individual records. It has further confirmed that there are more than 18 officers which it would need to consider.
32. In addition to the actual staffing costs, the Commissioner notes that there would be additional costs from within the budget categories shown above which would need to be identified and retrieved, such as training, transport costs and corporate costs. The public authority has advised him that: *"picking relevant individual items from within the other budget categories would be a considerable addition [to the time spent in ascertaining the staffing costs]".*

Conclusion

33. It is the Commissioner's view that the public authority has provided a reasonable estimate to support its position that it would exceed the appropriate limit to locate and retrieve the requested information, based on its assessment of the costs for locating the information for one single officer. He has therefore not sought a breakdown of any further time that would be taken in order to comply with the request. Whilst it might be expected that the budgets for SO14 would be structured in a different way, there is no requirement for the public authority to have such a structure and it must obviously organise its finances to suit its own requirements. The Commissioner does note that there is an overall budget allocated to SO14, but that this has not been requested so has not been considered. In any event, because of the large variety of duties performed by that unit, this budgetary figure would not satisfy the request for "royalty-related" information only.
34. The Commissioner also notes that the public authority had previously cited different exemptions in relation to complying with the request. However, as he has decided that the cost for compliance with the request will exceed the appropriate limit he will not consider whether or not any of the other exemptions apply.

Procedural Requirements

Section 10 - time for compliance with request

35. Section 10 of the Act states that a public authority must comply with section 1(1) promptly and in any event not later than twenty working days after the request has been received.
36. In this case, in failing to confirm that it held information falling within the scope of the request within 20 working days, the public authority breached section 10(1).

Section 16 - advice and assistance

37. Section 16 provides that:

"(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under

section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case".

38. Although the complainant did not raise the provision of advice and assistance as an issue the Commissioner believes it is appropriate for him to consider it in this case. As mentioned previously, the public authority stated in its letter of 15 March 2010,

"Under the section 16 duty to assist, I can provide advice as to how your request could be narrowed or re-defined to bring it within the cost threshold. As the description above indicates, while it is not possible to retrieve the specific amount spent on Royalty Protection, it would be possible to retrieve the total amount spent by SO14; this would include both Royalty Protection and the spends for other duties/responsibilities. Should you wish to proceed in this way, the information will be retrieved; it will then be reviewed to determine whether exemptions apply to this information".

39. Although he expressed disappointment to the Commissioner about the public authority's letter, the complainant did not submit a further request and asked the Commissioner to proceed with his decision based on the facts as they stood. In light of this the Commissioner will consider whether the public authority should have provided further help in order that the complainant could achieve the maximum success with his request.

40. In the Information Tribunal's ("the Tribunal") case of *Ian Fitzsimmons v The Information Commissioner and DCMS* [EA/2007/0124] the Tribunal found, at paragraph 46, that:

"Paragraph 14 of the Second Edition of the Code of Practice issued in November 2004 by the Secretary of State pursuant to section 45 of FOIA (the 'Code') states:

"Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit"... the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be applied to be supplied for a lower, or no, fee."

41. Accordingly, the Tribunal concluded at paragraph 47 that: *“A public authority that complies with the Code will be taken to have complied with its obligation to provide advice and assistance for the purposes of section 16 of FOIA. However, failure to comply with the Code does not necessarily mean that there has been a breach of section 16 of FOIA.”* The Tribunal further clarified that by expressly suggesting to the complainant that he narrow his request that it had complied with its statutory duties.
42. In view of this, the Commissioner finds that the public authority did try to provide advice and assistance to the complainant by making the suggestion as to how he could narrow or re-define his request to keep it within the cost ceiling of the appropriate limit. Although the Commissioner accepts the frustration that the complainant must have with the late application of the ‘appropriate limit’ to his request, it is the Commissioner’s view that the public authority was correct in citing this exemption. The Commissioner is satisfied that the way the request is worded, and the way that the information is held by the public authority, does not mean that it can be provided within the appropriate limit. Earlier provision of the letter which described how the information was held, along with the suggestion as to how an alternative request could be worded, would have allowed the complainant to appropriately refine his request in order to maximise his chances of success. Unfortunately, this was not done by the public authority in a timely manner, however, as it did invite a further refined request, the Commissioner does not find that it was in breach of section 16.

Section 17 – refusal of request

43. In this case, the public authority did not issue a refusal notice until 22 working days after the date of the request. In so doing it breached section 17(1) of the Act.

The Decision

44. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- it withheld the requested information on the basis that it would exceed the appropriate limit to provide it.

45. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- in failing to confirm within 20 working days that it held information the public authority breached section 10(1);
 - in failing to issue a timely refusal notice it breached section 17(1).

Steps required

46. The Commissioner requires no steps to be taken.

Other matters

47. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Internal review

48. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007², the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this case, the internal review took 63 working days to be completed.

Breakdown of costs

49. Although it is not a statutory requirement, the Commissioner considers that when applying the section 12 cost limit to a request for information, as a matter of good practice, a public authority should provide a breakdown of how they arrived at their estimate so that the

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_good_practice_guidance_5.pdf

applicant can consider refining his request to come within the cost limit.

Right of Appeal

50. 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)
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 17th day of August 2010

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 12 – Exemption where cost for compliance exceeds the appropriate limit

- (1) 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.
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
- (3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.
- (4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—
 - (a) by one person, or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
- (5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Section 16 – Duty to provide advice and assistance

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

Section 17 - Refusal of Request

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
 - (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.

- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.