

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 June 2011

Public Authority: The Commissioner of the Metropolis
Address: Metropolitan Police Service
New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant made a request to the Metropolitan Police Service (MPS) for copies of all documents, including emails sent and received by its employees, that made any mention of a named pathologist. The MPS refused to comply with the request on the grounds that the cost of compliance would exceed the appropriate limit. The Commissioner has investigated and finds that the MPS correctly cited section 12(1) of the Freedom of Information Act 2000. He requires no further steps to be taken.

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.

The Request

2. On 4 September 2010 the complainant contacted the MPS to request the following information:

"From 1 April 2009, I would like copies of all documents – including emails sent or received by employees of the Metropolitan Police – that make any mention of the pathologist [named individual]."

3. On 8 September 2010 the MPS refused to comply with the request on the grounds of cost citing section 12(1) of the Act. The MPS explained that it was:

"made up of over 100 Units, Boroughs and Business Groups and employs over 50,000 people. To search every unit and the emails of 50,000 staff members would be a massive undertaking and would take many hundreds, if not thousands, of hours to complete..."

The MPS invited the complainant to redefine his request to bring it under the costs limit and gave examples such as limiting the request to a specific Unit or reducing the timescale.

4. On 2 October 2010 the complainant disagreed with the application of section 12(1) and requested an internal review of the decision. He asserted:

"Given the existence of a simple, and free, tool such as Google Desktop that can index an entire computer server in a few hours of a machine's idling time and then complete a search in a matter of seconds, this claim is simply untrue."

5. On 22 October 2010 the MPS completed the internal review and upheld its original decision to refuse the request on grounds of cost. The MPS reiterated the fact that *"there are many areas within the MPS in which information would be held which is relevant to [the] request"*. The MPS explained that the request would capture information concerning the named individual's work on behalf of MPS and local coroners conducting post mortem examinations, and that locating this information *"would require a manual search through the HOLMES system which would exceed 18 hours"* worth of work.

The Investigation

Scope of the case

6. On 8 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that the MPS had refused the request on grounds of cost. He made the point that the:

"Metropolitan Police have refused to use tools that would make the search for information quicker and easier. I don't accept this any more than I would accept a gardener trying to bill me for 200 hours work carried out with a spoon when it would have taken two with a spade".

Chronology

7. On 9 February 2011 the Commissioner wrote to the MPS seeking further explanation and evidence as to why it considered compliance with the request would engage the costs limit.
8. On 9 February 2011 the MPS telephoned the Commissioner to discuss the main issues of the case highlighted in his letter. It pointed out that no system allows the MPS to search all its emails (MPS currently employs approximately 50,000 staff) and that a sampling exercise of just one minute per member of staff would therefore total 50,000 minutes. The duty to provide advice and assistance under section 16(1) of the Act was also discussed.
9. On 11 February 2011 the Commissioner contacted the MPS asking that it address, in its forthcoming response to the Commissioner regarding the section 12(1) refusal, the complainant's suggestion that the MPS could download a free piece of software in order to carry out searches for the requested information. The Commissioner also asked whether the MPS could expand a little on the fact that its records management systems fit the relevant business needs.
10. On 18 March 2011 the MPS provided a substantive response to the Commissioner in answer to his enquiries regarding the costs refusal. The MPS also repeated its willingness to offer further advice and assistance to the complainant, as it had done at the internal review stage, to attempt an informal resolution of the case and enable the complainant to obtain information under the costs limit.
11. On 22 March 2011 the MPS telephoned the Commissioner to discuss the fact that it was keen to offer more specialised advice and assistance under section 16(1). The MPS explained that it could offer alternative information related to the request in this case which might help the complainant refine his request. The Commissioner agreed that the MPS could offer further assistance at this stage of the investigation if it so wished.
12. On 28 March 2011 the MPS contacted the complainant explaining that, even though he had revised the date referred to in his information request, the wording of the request, being for 'all documents', was still very broad. The complainant was invited to contact the MPS to discuss refining his request further so that it might be possible that information could be identified and provided to him under the costs limit.
13. On 29 March 2011 the MPS notified the Commissioner that the complainant had responded. He had refused the offer of further advice and assistance from the MPS.

Analysis

Substantive Procedural Matters

14. Section 12(1) of the Act provides that:

"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."

15. The 'appropriate limit' in relation to this case (as set out by the fees regulations) is £450, or 18 hours at £25 per hour. The fees regulations further specify the tasks that can be taken into account when reaching a cost estimate. They are:

- determining whether the information is held;
- locating the information;
- retrieving the information;
- extracting the information.

16. Section 12(1) explicitly states that public authorities are only required to estimate the cost of compliance with a request, not give a precise calculation. Therefore, it is the Commissioner's task (in this situation) to decide whether or not the estimate provided by the MPS is reasonable in the circumstances.

17. In its estimate provided to the Commissioner as part of his investigation, the MPS described the tasks involved and problems surrounding searching for information held electronically in email form. It also drew the Commissioner's attention to the fact that the request for emails and the suggestion that a free desktop tool be used in order to search the MPS systems only formed part of the request. The MPS commented on the:

"sheer scope, or breadth, of the complainant's request...the request asks for 'copies of all documents'...by the complainant's wording, the MPS must therefore consider not only information that may be held in searchable electronic systems, but also whether any supporting or additional paper records may exist."

18. The above point concerning the breadth of the request and the volume of information which may be held had previously been made by the MPS in the internal review decision with regard to its costs estimate. The MPS had identified that there were many areas within the MPS that might hold information relevant to the request. These included departments such as the Directorate of Legal Services, the Specialist

Crime Directorate and the Directorate of Public Affairs. The MPS had gone on to state that:

"[the] request would capture all matters that [named individual] may have been involved in over the time he worked on behalf of the MPS and local coroners conducting post mortem examinations. To locate relevant information would require a manual search through the HOLMES system... It would exceed 18 hours to search across the HOLMES system as each case would need to be individually checked for information..."

19. The MPS also identified that information regarding forensic post mortems conducted by the named individual might also be held locally in each Borough. To fully comply with the request, a manual search to locate, retrieve and extract relevant information would need to be carried out as there is no central repository for this information.
20. Turning to the complainant's request for *'all emails sent and received'* concerning the named individual, the MPS made the Commissioner aware that the estimate was based on the fact that the MPS currently has over 50,000 email users and that over 576,000 emails are sent and received every day. The MPS went on to explain that *"the data held by the MPS amounts to many terabytes (one terabyte is equivalent to 1000 gigabytes, and one gigabyte is equivalent to 1000 megabytes) [and is] stored across multiple servers..."*
21. The Commissioner understands the complainant's expectations that information stored electronically should be easily accessible. He does, to some extent, also understand the complainant's frustrations that a search tool may exist that could, if possible to install, enable the MPS to locate, retrieve and extract the information requested in less time than estimated and therefore within the costs limit. However, the MPS provided the Commissioner with its arguments as to why the complainant's assertion that it should download Google Desktop for free in order to undertake full searches of its systems is not a feasible option.
22. The MPS made the point to the Commissioner that while Google Desktop may be suitable for an individual 'home user' it was not an appropriate tool for the MPS. The MPS is a large corporate estate using multiple servers employing 50,000 staff. The MPS stated:

"No tool can be simply 'downloaded' and introduced to the live estate without the appropriate assurance processes and rigorous testing to ensure there would be no impact on live services..."

The MPS went on to make the point that this testing itself would *“require time and be associated with a financial cost”* and that any software used by the MPS would require formal corporate licensing and enterprise agreements to be put in place.

23. The Commissioner is of the view that for the reasons described above Google Desktop is not an appropriate piece of software for the MPS to use in order to facilitate compliance with the request. Furthermore, downloading the application, even if it were within the MPS security or IT policies, would not only incur further costs to the MPS but would require modifying current processes at the MPS. The Commissioner holds that, under section 12(1) of the Act, the MPS is not obliged to modify those processes in order to comply with a request for information.
24. Specifically in this case, if the search tools for the software available to the MPS at the time of the request do not allow for the requested information to be retrieved within the appropriate limit, there is no obligation under the Act for that information to be retrieved. The systems in place at the MPS are fit for purpose and meet the business needs of the MPS. The Commissioner therefore rejects the complainant's suggestion to download free search tools, not because the suggestion would not create a more efficient way of obtaining the data if implemented, but because the Act does not require the MPS to undertake it.
25. The Commissioner is conscious that the request for *'all emails sent and received'* forms only part of the request and that locating, retrieving and extracting the information in both electronic and manual paper format would incur costs to the MPS which exceed the appropriate limit. He notes that on several occasions the MPS offered advice and assistance to the complainant regarding refining his request and suggested opening a discussion during the Commissioner's investigation concerning the possible ways this could be done. The complainant refused to engage with the MPS regarding the refining of his request. The Commissioner has investigated and accepts the MPS's estimate as reasonable and the application of section 12(1) as valid.

The Decision

26. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

29. 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.

30. 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 27th day of June 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“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.”

Section 12(2) provides that –

“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.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“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”.