

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 6 September 2011

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

Summary

The complainant contacted the Metropolitan Police Service (MPS) and requested information concerning which countries had refused to co-operate with any investigation by the MPS into alleged war crimes. The MPS refused to comply with the request on the grounds that section 12(2) was engaged. The MPS stated that determining whether the requested information was held would exceed the appropriate costs limit. The Commissioner investigated and has found that the MPS was correct to apply section 12(2) to the request. He has also found that the MPS has discharged its duties under section 16(1) of the Act and provided advice and assistance to the complainant. However, the MPS responded to the request outside the statutory time limit and therefore breached section 17(5). The Commissioner requires no further steps to be taken by the MPS.

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 13 October 2010 the complainant requested the following information:

"I would like to make a fresh FOI request to ask which countries have refused to co-operate with any Met investigation into alleged war crimes, how many times this occurred (with each country) and how many alleged perpetrators (in each country) this has involved."

3. The MPS received the request on 13 October 2010.
4. On 17 November 2010 the MPS responded refusing to comply with the request on the grounds that section 12(1) applied to the request – the cost of compliance would exceed the appropriate limit. The complainant was invited to refine his request.
5. On 27 November 2010 the complainant declined to refine his request and requested an internal review.
6. On 24 December 2010 the MPS completed the internal review. The MPS upheld its original decision to refuse to comply with the request. However it cited section 12(2) as the relevant subsection as to determine whether information pertaining to the request was held would exceed the appropriate limit.

The Investigation

Scope of the case

7. On 13 January 2011 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 his request had been refused under section 12(2) of the Act.

Chronology

8. On 5 May 2011 the Commissioner wrote to the MPS to make it aware of the complaint and to seek further explanation as to why it considered the costs limit to be engaged.
9. The MPS telephoned the Commissioner several times to discuss the case with a view to engaging with the complainant further to offer advice and assistance regarding refining the request to bring it under the costs limit.
10. On 14 June 2011 the MPS wrote to the complainant to suggest ways in which the request could be refined to enable compliance under the costs limit.
11. On 16 June 2011 the Commissioner wrote to the complainant asking for clarification as to whether he wished to submit new requests based on

the advice provided by the MPS and wished to accept the informal resolution of this current case.

12. On 20 June 2011 the complainant informed the Commissioner that he was interested in submitting new, revised requests while keeping the current complaint open.
13. On 20 June 2011 the Commissioner advised the complainant that the current request would be likely to exceed the cost of compliance and that the offer of advice and assistance regarding refining the request was made by the MPS in good faith. The Commissioner asked whether in light of this the complainant wished to withdraw his request and subsequent complaint.
14. On 20 June 2011 the complainant responded to the Commissioner stating that he did not accept the informal resolution of his complaint and that he did not accept the application of section 12(2) to his request.

Analysis

Substantive Procedural Matters

Section 12 – cost of compliance exceeds appropriate limit

15. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
16. Section 12(2) allows a public authority to refuse to confirm or deny whether it holds information of the nature requested if simply to do so would in itself exceed the appropriate limit.
17. The appropriate limit for central government departments is £600 and for all other public authorities, including the MPS, it is £450 or 18.5 hours of one member of staff's time.
18. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and

- extracting the information from a document containing it.
19. Section 12 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.
 20. At the time of the internal review, the MPS explained to the complainant that details of anyone coming to the attention of the MPS regarding anything related to alleged war crimes were stored on the 'HOLMES' database. The MPS explained that this database includes details of witnesses, victims and police officers along with the information the complainant was interested in concerning any suspects. The MPS stated that determining who was an alleged suspect from the rest of the details recorded would exceed the statutory time frame.
 21. In correspondence to the Commissioner during his investigation, the MPS echoed this point and explained that not only was the task of identifying suspects a costly exercise but that by definition the term 'investigation' used in the request captured a vast number of records which would need examination. The MPS stated that there are a great number of cases or referrals which were subject to preliminary investigation but do not progress to a 'full' investigation. In the MPS's view, the wording of the request at present captures all cases resulting in either a preliminary or full investigation and therefore full compliance with the request would exceed the costs threshold due to the amount of records involved.
 22. The Commissioner is in agreement that the request is broad in scope and captures information relating to any type of investigation carried out by the MPS in relation to alleged war crimes. In light of this, the Commissioner made enquiries to the MPS regarding how all the relevant records were kept and how information could be searched for in order to ascertain whether the costs limit would be engaged.
 23. The MPS explained to the Commissioner that at the time of the request there were no specific fields in the HOLMES system that allowed the records to be searched by reference to whether countries had co-operated with an investigation. The MPS wrote:

"...each record contains specific fields in which details such as name and date of birth are entered; however, there are no fields set up to capture details of co-operation...Any information held regarding co-operation...would only be recorded within the documentation attached to each individual case; to determine whether the requested information was held in each case would require a search through the

attached documentation until such a time as the requested information was found or located. This search would need to be repeated for each and every relevant record...".

24. In order to provide the Commissioner with details of how many records were relevant to the request, the MPS carried out a manual search of all the records on the database to identify which related to war crimes suspects. Over 8,000 records were identified as relating to suspects which concurred with the estimate given in the internal review decision. The MPS confirmed to the Commissioner that this task took around two and a half working days to complete. The MPS reminded the Commissioner that this was only the first stage in determining whether information was held relevant to the request. Each individual record of the 8,000 identified would need to have its attached documentation manually viewed in order to determine whether a country's co-operation with an investigation had been recorded. This would require additional time on top of the two and a half days already taken to identify the suspects' records.

25. As part of the Commissioner's investigation, the MPS performed a dip sample to confirm that the estimate provided for the time taken to identify whether a record related to a suspect was reasonable. The MPS informed the Commissioner that:

"In one test, it took two minutes to view 10 records. Using a stopwatch in a further test for confirmation, it took 11 seconds to enter the record, view the details page to determine the individual's identity and note down if the record was relevant. Based on this figure, only 5,400 records could be accessed in an 18 hour period. ...further time would then be required in addition to this for a second stage to enter the records themselves and seek the details of co-operation...".

26. Again the MPS undertook a dip sample for this second stage. It stated:

"One record was accessed and the attached documentation viewed. This record had 17 documents attached to it; entering and appraising each document...to identify any relevant information took 31 minutes – approximately two minutes per document. Therefore if...it was possible to locate the requested information by viewing only one document attached to each of the 8,000+ cases, this would add a further 16,000 minutes to the total time needed...".

27. The Commissioner understands that the key point in this case is that the requested information relating to the co-operation of countries investigated for alleged war crimes is not entered onto the HOLMES database in a searchable field. The information could be located within the numerous files attached to each of the identified 8,000 records. He

accepts that the estimate provided by the MPS in relation to the tasks involved in determining whether the requested information is held is a reasonable one. The Commissioner, therefore, also considers that the MPS was correct to refuse to confirm or deny whether information is held on the grounds that section 12(2) applied to the request.

Section 16 – Duty to provide advice and assistance

28. Section 16(1) of the Act places a duty on public authorities to provide advice and assistance to applicants who have made or are planning to make requests for information. Where a request engages the costs limit, the advice and assistance usually involves the public authority opening a dialogue with the applicant to try to find ways to refine the request in order to bring it under the appropriate costs limit.
29. The Commissioner is aware that the MPS entered into detailed communication with the complainant before and during his investigation in order to attempt to explain the application of section 12(2) and work with the complainant to refine the request to bring it under the costs threshold. The MPS made suggestions regarding revised requests the complainant could submit and carried out extensive work creating new searchable fields so that in the future requests of this nature would be more likely to be complied with.
30. The MPS explained to the Commissioner that the complainant had accepted its offer to visit the war crimes team earlier in the year and had visited the MPS with a view to understanding in greater detail the work of the war crimes team and how and why information was recorded and retrieved. The MPS informed the Commissioner that in its opinion the complainant had left the meeting satisfied with the visit and, it assumed, with the costs explanation.
31. The Commissioner is satisfied that the MPS has discharged its duties under section 16(1) and owing to the costs explanation provided, he can see no further advice and assistance that the MPS could provide to the complainant in this case.

Procedural Requirements

32. From the information provided to him in this case, the Commissioner is aware that the MPS failed to respond to the complainant's request within the statutory time period of 20 working days.

The Decision

33. 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:

- the MPS correctly applied section 12(2) to the request; and
- the MPS provided advice and assistance compliant with section 16(1).

34 However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- the MPS failed to issue the refusal notice within the statutory time period and therefore breached section 17(5) of the Act.

Steps Required

35. The Commissioner requires no steps to be taken.

Right of Appeal

36. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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 6th day of September 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

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."

Refusal of Request

Section 17(1) provides that -

"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."

Section 17(2) states –

"Where–

- (d) in relation to any request for information, a public authority is, as respects any information, relying on a claim-

1. that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
2. that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(e) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (f) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (g) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 17(4) provides that -

"A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that -

"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."