Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2019

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested an anonymised copy of a database from the Metropolitan Police Service (the "MPS"). Having previously determined that to respond with the request would exceed the cost limit at section 12(1) of the FOIA, during the Commissioner's investigation the MPS revised its position and instead cited section 14(1) (vexatious request). The Commissioner's decision is that it was correct to do so. No steps are required to be taken.

Background

2. The request refers to an "eSafety database". The MPS has explained the following about the system:

> "*As with all employers, the MPS are required under the HSE* [Health & Safety Executive]*'s Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) to report specified workplace incidents to the HSE.*
>
> *In order to comply with this legal requirement and following an HSE Improvement Notice in 2003 the MPS developed a computerised Accident/incident Recording System (MetAIR) to record all accidents/injuries, near misses, and not just those that are specified by RIDDOR.*

In 2017 due to changes to the MPS corporate IT systems, this system was replaced by eSafety (an off the shelf package developed by Warwick International Computing Systems (WICS) Ltd).

The MPS eSafety system was tailored to (as far as was reasonably and practically possible) reflect the user experience/interface with MetAIR and to reflect the existing data fields. It was also possible to reduce the number of free text fields to providing drop down options…

... All members of the MPS extended family (in the region of 41,600 individuals) have access to the system via the portal, although there are restrictions on the extent of access, which is based on role/band/rank and/or business area.

For example, individuals can input details of near misses (i.e. an unplanned events that did not result in injury, illness or damage but had the potential to do so) and see entries that relate to themselves.

All other injury/accident event details should only be input by those of a supervisory band/rank (in the region of 10,100 individuals)…

… The MetAIR/ESafety system was not designed as an analytical tool that is not the purpose of the system. Any data captured on the system is to enable the MPS to fully meet its obligations under RIDDOR".

Request and response

3. On 1 June 2018 the complainant wrote to the MPS and requested information in the following terms:

"Please provide a copy of the eSafety database concerning injured police officers (and staff, if recorded), from 01.01.13 to 01.06.18. Whilst names will be need to be redacted, please provide all other information that does not breach section 40, including where the incident happened (Street level address is fine) the nature of the incident, and the level of injury.

Please also provide the free text describing all incidents from Jan 1st 2018 to date."

4. On 10 July 2018, the MPS responded. It advised that to comply with the request would exceed the cost limit at section 12 of the FOIA. It

provided a suggestion as to how the complainant might refine his request.

5. The complainant requested an internal review on 11 July 2018 suggesting:

> *"… there is no reason you could not remove the fields from the dataset that contain personal information, and release the rest, and this would then not require such a manual checking procedure".*

6. Following an internal review the MPS wrote to the complainant on 15 September 2018. It maintained its position.

7. During the Commissioner's investigation this position was revised. The MPS advised the complainant that his request was vexatious, as per section 14(1) of the FOIA, as it was too burdensome to comply with.

Scope of the case

8. The complainant contacted the Commissioner on 17 September 2018 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 3 October 2018.

9. Following the MPS's revised position, the complainant asked the Commissioner to consider the application of section 14(1) to the request. Having accepted that the requested information could have personal data removed prior to being disclosed, he nevertheless argued that disclosure should include provision of full postcodes. His grounds of complaint on this point were as follows:

> "*I disagree that the disclosure of postcodes would be personal information, given these are not exact coordinates, or that the disclosure of postcodes would be detrimental to investigations, as this seems highly unlikely given the limited nature of this dataset, as suggested by the Met Police in their responses*".

10. The Commissioner will consider the application of section 14 below.

Reasons for decision

Section 14 – vexatious requests

11. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated

to them. However, section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

12. The term 'vexatious' is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*[1]. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

> *"…importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45).

15. The Commissioner has published guidance on dealing with vexatious requests[2]. That guidance includes a number of indicators that may apply in the case of a vexatious request. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of the case will need to be considered in reaching a judgement as to whether or not a request is vexatious.

16. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. However, a public authority may also consider the context of the request and the history of its relationship with the requester when this is relevant.

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[1] https://www.judiciary.gov.uk/judgments/info-commissioner-devon-county-council-tribunal-decision-07022013/

[2] https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf

17. Sometimes it will be obvious when a request is vexatious, but sometimes it may not be. In that respect, the Commissioner's guidance states:

> *"In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress".*

The MPS's position

18. The MPS has advised that, at the time of the request, there were in the region of 5,500 records on the current eSafety database and that there are around 80 fields which can be populated within each of these records. The older MetAIR database contains around 27,000 records, also with around 80 fields per record, and has more free text fields than the current one. The records mostly apply to incidents within the MPS's own force area but some fall outside it as they may include officers intervening at an incident whilst travelling to/from work, officers intervening at incidents whilst on duty outside the MPS boundaries and officers deploying at incidents as part of their national/international roles.

19. The MPS advised the Commissioner that to retrieve, locate, review, extract and redact the information would be burdensome because there are around 33,000 records that it would need to consider.

20. In respect of the specific part of the request which asks for the "*free text describing all incidents from Jan 1st 2018 to date"* it explained that there are in the region of 2,750 entries on the eSafety database and that:

> "*All free text fields would need to be viewed to ascertain any personal information (i.e. names) or information that may be deemed sensitive (i.e. details relating to covert operation – address/unit/role of individual that may have been input into the field)*".

21. The MPS further qualified its position saying:

> *"As already explained in the internal review for the period of 01/01/2013 to 01/06/2018 there have been approximately 33,000 entries (based on a working average of 6,000 per year). For each record there are up to 80 fields that could be completed, this equates to 2,640,000 pieces of data. To read and review each MetAIR/eSafety record to ensure that no sensitive data is disclosed and then to record the information requested would take a single member of staff a minimum of 3 minutes per record to look at all the fields (multiple free text fields) between the dates of*

01/01/2013 to 01/06/2018. Therefore based on this calculation, the MPS has estimated that it would take a member of staff a minimum of 1,650 hours to respond to the request.

Even with an ***incredibly generous time*** *of 1 minute per record, it would take a member of staff a minimum of 550 hrs:-*

33,000 x 1 minute (absolute minimum time) / 60 minutes = 550 hours

This of course does not include the additional time that would be required to review and redact.

Therefore, the MPS is of the opinion that to effectively answer [the complainant]*'s request would impose a grossly oppressive burden on the MPS, far in excess of the usual Section 12 costs regime of a maximum of 18 hours work.*

The database may also contain information that would also attract redactions on the basis of Section 40 Personal Information, Section 30 Investigations and Proceedings or Section 31 Law Enforcement. Manual review would be required to determine whether the exemptions are engaged. Information could relate to street addresses, which may be addresses of the offender, victims or witnesses. Personal information relating to the victim and/or suspect would be shown in the incident description etc.

The potentially exempt information cannot easily be isolated, as it would be spread throughout the database therefore a member of staff would need to read, review and redact which would be too burdensome for the MPS".

22. The MPS provided the Commissioner with a small sample of the raw data from its eSafety database consisting of 138 individual records. Whilst some of the fields seem not to be used, and some have limited input options, ie a 'drop down' menu style, many are 'free text' and their content therefore consists of whatever the inputter thought was appropriate to include. As examples, the fields allowing free text comments include those entitled 'details of incident', 'investigation details', 'immediate action taken' and 'comments', all of which contain many examples of officer names and collar numbers as well as some police incident reference numbers and further details of the incident concerned. Therefore, whilst the complainant has advised that he does not require personal data, the only way of removing it from these freetext fields prior to disclosure would be to read them, make a judgement as to their sensitivity, and then manually redact that data.

23. The complainant has also drawn specific attention to any fields containing postcodes as he does not consider these to be personal data and is therefore of the opinion that these can all be disclosed. Whilst this point concerns only one element of the overall request as there are personal details scattered throughout other fields, the Commissioner will comment on this for clarification on her position.

24. Post codes identify groups and tiers of addresses. They are comprised of two parts. The first half is known as the outbound postcode and identifies the post town. The second half is the inbound postcode and will identify a limited number of addresses and in some cases an individual address. In many cases it will be difficult to say with any certainty the extent to which postcodes falling within the scope of a request will relate to individual addresses and so the individuals living at that address. However since there is the risk that individuals could be identified from a **full** postcode the Commissioner's general approach is to treat the full post code of residential properties as identifying individuals.

25. Once the second half of the post code is removed the post code can no longer identify an individual address and so cannot be linked to an individual. However this general approach does not rule out the possibility of full post codes being disclosed, for example where it is obvious that the post code relates to a company address or other non-residential addresses such as hospitals or police stations. Furthermore, there may also be cases where even though the full post code would identify an individual the disclosure of such personal data would not breach the data protection principles in that particular case.

26. It is again noted that the complainant has insisted on provision of full postcodes as he does not consider them to be personal data. The Commissioner does not agree with his view and considers that the MPS would be required to manually check and consider whether or not each postcode could identify a party prior to disclosure as to do so may be in breach of the provisions of the Data Protection Act 2018.

Is the request burdensome?

27. As referred to above, the Commissioner has produced guidance on dealing with vexatious requests. In her guidance the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests, one of which is burden on the authority.

28. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

29. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.

30. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. However, it is important to recognise that one request can in itself be vexatious, depending on the circumstances of that request, which is what is under consideration here.

31. The Commissioner's guidance on section 14 clarifies that a public authority is not able to cite section 12 for the cost and effort associated with considering exemptions or redacting exempt information. However, it goes on to say:

> *"Nonetheless, it may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation".*

The Commissioner's position

32. The burden on the MPS in this matter arises from the resources and staff time that would need to be spent on addressing the complainant's information request. The complainant himself recognises that there is personal information within the database and has agreed that this can be properly withheld. However, in order to do so the MPS would need to spend considerable staff time in reviewing and redacting any such information from the 30,000 records it holds on the two databases, prior to disclosure of any non-exempt material. The costs provision (section 12 of the FOIA) cannot be claimed on this basis, however, the Commissioner's published guidance on section 14(1) allows for the possibility that a request can be refused as vexatious on the basis of the time that would be taken in addressing it.

33. The Commissioner's guidance on burdensome requests advises that there is a high threshold for refusing a request on these grounds. This means that an authority is most likely to have a viable case where:

- The requester has asked for a substantial volume of information **AND**
- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO **AND**

- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

34. The volume of information under consideration in this request is clearly substantial. The complainant himself has also acknowledged that the databases contain personal information and that he is happy for this to be properly redacted prior to disclosure. There is also further material within the databases that may need to be redacted as some of it relates to police incidents. Having viewed a sample of the information held it is also clear to the Commissioner that the personal information is scattered throughout free text fields within the databases and cannot be easily isolated.

35. Having considered the MPS's submissions the Commissioner is satisfied that complying with this request would place a grossly oppressive burden on it. In the Commissioner's view, disclosure of the information held on the databases would necessitate a detailed and considered review and redaction of data to ensure no personal data - or police operational data - is disclosed. This would be the case even without consideration of postcodes as there are so many other freetext fields where personal data, and police operational data, has been input. She therefore concludes that the MPS was entitled to find that the request is vexatious.

Other matters

36. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

37. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.

38. Part VI of the section 45 Code of Practice states that it is 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. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers 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 take longer but in no case should the time taken exceed 40 working days; it

is expected that this will only be required in complex and voluminous cases, which this request was not. The Commissioner is therefore concerned that it took in excess of two months for the MPS to conduct an internal review in this case.

39. The Commissioner would like to remind the MPS that she routinely monitors the performance of public authorities and their compliance with the legislation. Records of procedural breaches are retained to assist the Commissioner with this process and further remedial work may be required in the future should any patterns of non-compliance emerge.

Right of appeal

40. 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: 0300 1234504
    Fax: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.

42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed ……

Carolyn Howes
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