

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 May 2024

Public Authority: Chief Constable of Wiltshire Police
Address: Wiltshire Police Headquarters
London Road
Devizes
Wiltshire
SN10 2DN

Decision (including any steps ordered)

1. The complainant has requested information relating to fly-grazing and loose/escaped horses/ponies in a particular area.
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 26 January 2024, the complainant requested information on the following terms:

"How many reports have there been of fly-grazing and loose/escaped horses/ponies from Bradenstoke (including Clack Hill) from 1 January 2023 to current date (26 January 2024)?"

How many times have Wiltshire Police attended any incidents as a result of any reports in the same period?"

7. On 14 February 2024, the public authority responded. It relied on the cost exemption in section 12(2) of FOIA to refuse the request.
8. On internal review dated on 27 February 2024, the public authority changed its position to a refusal based on section 12(1) of FOIA.

Reasons for decision

Section 12 – cost of compliance

9. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
10. 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")
11. 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.
12. 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.
13. 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.

14. 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.
15. 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.
16. 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

17. The complainant is of the view that the information must be held by the public authority in an easily searchable format, stating:

"It seems unlikely that Wiltshire Police, as a modern organisation making use of standard IT/Call centre technology to document, record and manage cases, do not already hold information of this nature in a database/spreadsheet format.

Given that similar information is already in the public domain, it seems unlikely that it would not be possible to provide the requested information quickly and efficiently.

To state that it would take more than 18 hours to query such a database/spreadsheet is not credible."

The public authority's position

18. In its internal review response, the public authority explained to the complainant:

"To clarify, the information that you are requesting is not stored in a way which allows for easy retrieval and Wiltshire Police does not have the search facility to automatically gather this data. On liaising with our Team Performance Department, they have confirmed that to ascertain this information for the requested time period, it would require manually searching and reading each and every 'Storm Log' individually to determine whether they related to your Questions."

19. The Commissioner expects any public authority which is relying on section 12(1) to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
20. "STORM Logs" are created when police attend an allegation of crime.
21. The public authority advised the Commissioner that there were 131,507 "STORM Logs" recorded for the period in scope. The public authority explained that certain searches can be carried out digitally but that these are targeted using specific information such as an address. In the case of this request, the public authority advised that the team responsible for the analytical work required to respond to the request confirmed that because of the unspecific nature of the request, a manual search would have to be completed to obtain the information requested.
22. Following the Commissioner's request to do a sampling exercise of the "STORM Logs" for the period in scope, the public authority carried out the following exercise:

"We have scrolled through the first one hundred entries on the data base looking for any data that 'may link' to horses/ponies/Clack Hill/Bradenstoke. This is an unreliable search as we are relying on the location directly linking to Clack Hill or Bradenstoke. For example, it could be a road number, name of a road in Bradenstoke, first line of a farm or location near Bradenstoke."
23. The public authority reported to the Commissioner that to 'quickly' scroll through 100 entries took 5 mins and that therefore it estimated that to simply do the initial scrolling through the 131507 "STORM logs" for the period in scope divided by 100 storm logs x 5 mins = 6575 mins, i.e. 109 hours.
24. The public authority further explained that:

"any 'hits' would then need to be perused to identify if it involved loose/escaped horses/ponies and if Wiltshire Police attended any incidents as a result of any reports."

The Commissioner's view

25. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
26. The Commissioner is satisfied by the public authority's explanation as to why manual scrolling would be required to find the information requested due to the nature of the request and the way in which information is recorded in the "STORM Logs." The Commissioner is also

satisfied that the public authority has carried out a suitable sampling exercise which demonstrates the validity of the estimate.

27. The Commissioner notes that, even if the public authority's estimate was slightly high, in order for it to comply with the request without exceeding the cost limit, it would need to review 122 Storm logs per minute just to identify a possible incident falling within scope of the request – which the Commissioner does not consider feasible.
28. Complying with the request would therefore exceed the cost limit by a significant margin 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

29. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
30. 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.
31. In this case, the public authority informed the requester that it could not think of a way that the request could be refined and was unable to provide any assistance in this respect.
32. In its response to the Commissioner, the public authority stated that it would like to add to its previous responses to the complainant:

“Under our s16 to assist you where we can you could contact the [local policing team](#), for that area, to enquire if they have any anecdotal evidence linked to fly-grazing and loose/escaped horses/ponies from Bradenstoke (including Clack Hill).”
33. The Commissioner is therefore satisfied that the public authority did comply with section 16 of FOIA when dealing with this request.

Right of appeal

34. 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

35. 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.
36. 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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