

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 2013

Public Authority: Chief Constable of Dyfed-Powys Police

Address: Police Headquarters

PO Box 99

Llangunnor

Carmarthen

SA31 2PF

Decision (including any steps ordered)

1. The complainant requested all emails held by Dyfed-Powys Police that made reference to a particular individual from January 2008. Dyfed-Powys Police stated that it would exceed the cost limit to confirm whether or not it holds the requested information (section 12(2)).
2. The Commissioner's decision is that Dyfed-Powys Police has provided a reasonable estimate of the costs associated with complying with the request and has therefore correctly applied section 12 of the FOIA to the request. However, the Commissioner finds that Dyfed-Powys Police breached section 16(1) of the FOIA in that it did not provide advice and assistance to the complainant as to how his request could have been refined to bring it within the cost limit.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - to take reasonable steps to advise and assist the complainant with a view to refining the request to bring it within the cost limit.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 25 March 2013, the complainant wrote to Dyfed-Powys Police and requested information in the following terms:

"All emails internal & external held by Dyfed Powys that make reference to [name redacted] who was convicted of causing death by careless driving in 2010".
6. Following clarification that the period covered by the request was from January 2008, Dyfed-Powys Police responded on 24 April 2013. It stated that the time it would take to determine whether it held the information requested would exceed the appropriate limit and, as such, it was refusing the request under section 12(2) of the FOIA.
7. On 2 May 2013 the complainant requested an internal review of the handling of his request.
8. Dyfed-Powys Police provided the outcome of its internal review on 2 May 2013 and upheld its decision to rely on section 12 of the FOIA as the basis for refusing the request.

Scope of the case

9. The complainant contacted the Commissioner on 23 May 2013 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of his investigation to be to determine whether Dyfed-Powys Police correctly applied section 12(2) of the FOIA to the request.

Reasons for decision

Section 12 – cost of compliance

11. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying would exceed the appropriate cost limit.
12. Subsection 12(2) states that section 12(1) does not exempt the public authority from its obligation at section 1(1)(a) to confirm or deny whether the requested information is held, unless the estimated cost of complying with that duty alone would exceed the appropriate limit. However, where a public authority estimates that to confirm whether or

not the requested information is held would exceed the appropriate limit then, under section 12(2) of FOIA, it does not have to deal with the substance of the request.

13. In this case, Dyfed-Powys Police estimates that it would exceed the appropriate limit to confirm whether or not the requested information is held. In other words, it is citing section 12(2).
14. The appropriate limit in this case is £450, as laid out in section 3(2) of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations"). This must be calculated at the rate of £25 per hour, providing an effective time limit of 18 hours.
15. Dyfed-Powys Police told the complainant that, due to the fact that there is no central search facility for all emails held, the only way to establish whether there is any information held relevant to the request would be to search each individual mailbox and Outlook personal files. In its refusal notice it stated that it would take "a minimum of 2000 hours to establish whether there is any information held to answer this request".
16. When estimating whether confirming or denying whether it holds the requested information would exceed the appropriate limit, a public authority may take into account the costs it reasonably expects to incur in determining whether it holds the information. The estimate must be reasonable in the circumstances of the case.
17. Although the request makes reference to an individual's conviction of causing death by careless driving in 2010, it does not specify that the request relates solely to any information which may or may not be held concerning a conviction of death by careless driving. As such, Dyfed-Powys Police explained to the Commissioner that it interpreted the request as being for **all** e-mails regarding the named individual, and not just any emails which may or may not be held relating specifically to a conviction of causing death by careless driving. The Commissioner agrees with Dyfed-Powys Police that the request is clear in what it is seeking and that its interpretation is consistent with an objective reading of the request.
18. Dyfed-Powys Police explained that it does not have any central search capability for individual mailbox and Outlook personal folders (emails held in PST files).
19. In view of the broad nature of the request ie that it is for all emails about a named individual, Dyfed-Powys Police indicate that it is not possible to determine any specific staff/officers/departments who were likely to hold information relating to the request. As such, searches

would be required of individual mailbox and Outlook personal files for all staff, including those individuals who left the organisation during the period in question. As at 3 July 2013, the total staff establishment figures for Dyfed-Powys Police were 1935 (officers and police staff). As the request is for information from 2008, and a number of employees have left the organisation in the period, Dyfed-Powys Police estimate that around 2000 individual accounts would need to be searched in order to identify information relevant to the request.

20. Dyfed-Powys Police explained that individual users would be able to search their own records. However, it would be difficult to co-ordinate 2000 users to conduct searches and some users have limited knowledge and capability using Outlook and would not be confident in conducting such searches. As such, Dyfed-Powys Police advised that its estimate for the time to comply with the request is based on central searches being undertaken by its Information Systems & Technology (IS & T) staff as they have greater knowledge of the e-mail system and would be able to search much faster. In addition, the IS & T team would need to carry out the searches of email and PST folders for staff who have left the organisation.
21. Dyfed-Powys Police provided the Commissioner with the following breakdown of tasks and activities that would be necessary to determine whether information relevant to the request is held.

Individual mailboxes – 30 minutes per mailbox

- Member of IS & T staff with admin privileges assigning themselves admin rights to an individual's mailbox
- Logging on to a computer as the user.
- Opening Microsoft Outlook as the user.
- Performing searches of the mailbox looking for emails relating to the named individual for 'All Mail items'.
- Noting the result and saving copies of any e-mails found.
- Logging off.
- Removing admin rights on the individual's computer.
- Moving on to the next user.

PST Folders & files – 30 minutes per user

- Contact each individual for details of where they have created their PST file – this could be done by e-mail individually, or followed by a call if necessary.
- Search every computer on the network to check local drives for any PST files, as it is highly unlikely that all users will have details of where they have PST files stored over the period in question.

- Any files identified would need to be recorded and a copy made in order for it to be searched locally as searching remotely can take significantly longer and impact on operational systems.
 - For every PST identified, it would need to be opened in Microsoft Outlook and searches conducted for emails relating to the named individual for 'All Mail items'
 - Noting the result, and saving copies of any e-mails found.
 - Removing the PST file from Outlook
 - Moving on to the next PST file.
22. Dyfed-Powys Police allow individuals to create PST files on any computer they utilise and as such the tasks and activities listed above are necessary to carry out appropriate searches. In addition to the tasks listed above, if the PST file is password protected, it would also be necessary to contact the individual to obtain the password. Dyfed-Powys Police advised that some PST files are large (over 2GB) which means that searches would take some time to complete.
23. Based on the above, Dyfed-Powys Police's total estimate for determining whether the requested information is held is 2000 hours. This is based on 2000 users and the fact that it would take 30 minutes to search the mailbox and 30 minutes to search the PST file for each user.
24. The Commissioner asked Dyfed-Powys Police whether there were any alternative methods it could use, such as sending an email to all staff asking each person to confirm whether they held any information relevant to the request. Dyfed-Powys Police stated that it had not considered this option when it originally responded to the request as its view was that the only way to establish for certain whether any relevant information was held was to conduct central searches carried out by its IS & T department.
25. Dyfed-Powys Police confirmed that it had the facility to circulate an email to all staff, however, it would be difficult to ascertain whether each member of staff had received the email, for example if staff were on annual leave, sick leave, maternity leave and had not created an out of office message. In any event, Dyfed-Powys Police believes that even if it were to adopt this method of searching for any relevant information, it would also exceed the appropriate limit.
26. Dyfed-Powys Police explained that emails are held within Outlook and, in addition, may be saved into folders on the server. For example, the FOI unit had a folder system on the main server (not the email server), which includes a series of folders organised, in the main, by year, subject area, the individual folders organised by subject. An electronic folder is created on the server for each request for information received.

27. During the Commissioner's investigation, staff within Dyfed-Powys Police's FOI unit undertook searches of their Outlook system to establish how long it would take to retrieve any information held. Based on the way that emails are held, it took the five staff who undertook the searches a total of 35 minutes. Based on an average search time of 7 minutes per member of staff, and staff establishment figures of 1935 (1133 Police Officers and 802 Police Staff), Dyfed-Powys Police estimate that this method of searching would take a total of 225.75 hours (1935 x 7 = 13545 minutes = 225.75 hours)
28. The estimate of 225.75 hours does not take into account the additional time it would take to list every member of staff, ensure they acknowledge receipt of the email, confirm that they have carried out relevant searches and whether and relevant information was identified. This confirmation would be required as without it, Dyfed-Powys Police would not be certain who had received the email and conducted relevant searches. It considers the administration of the process to be a significant task in itself. In addition, Dyfed-Powys Police advised the Commissioner that "a further consideration which was not considered within the original response to the request is that e-mails could be held outside of Outlook". It explained that whilst some emails may only be saved within Outlook, others may be saved to the main server and deleted from Outlook. There is also the possibility that emails were printed out, placed in relevant folders and deleted from Outlook.
29. To summarise, Dyfed-Powys Police's position is that whilst it would be possible to send an email to all staff, for the reasons given, it considers this method of searching would potentially provide an inaccurate response to the request as it would be difficult to be certain that all relevant information would be identified. As such, the only way to be certain that all electronically held information had been identified would be for central searches to be conducted by its IS&T department.
30. The Commissioner understands that a short email would not take long to draft and that this could be easily sent to all staff. Whilst the Commissioner accepts Dyfed-Powys Police's estimate of 7 minutes per individual to search his or her mailbox, he does not accept that all staff would need to conduct such detailed searches as he believes that some staff would know immediately whether or not they held any relevant information. However, the Commissioner does accept that all staff would, at the very least, need to read any email sent to them and understand what was required. He also accepts that some staff would need to conduct detailed searches of their email records. The Commissioner notes that, based on 1935 members of staff, even if it took an average of 1 minute per member of staff for them to read and understand what is being sought, this element of the search for information alone would exceed 32 hours which, in itself, would

therefore exceed the appropriate limit. Further, if only 10% of staff would need to conduct searches of their records, again, this task alone would exceed the cost limit (193 staff X 7 minutes = 1358 minutes = 22.5 hours)

31. Due to the broad nature of the information requested ie all emails internal and external about a named individual, the significant numbers of staff employed and the way in which emails are held within Dyfed-Powys Police, it is the Commissioner's view that adequate explanations have been provided – as referred to above – to demonstrate that it would exceed the appropriate limit of 18 hours to confirm or deny whether any relevant information is held. His conclusion is, therefore, that section 12(2) was appropriately applied to the request.

Section 16 – advice and assistance

32. Section 16(1) imposes an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice¹ in relation to the provision of advice and assistance in that case.

33. Paragraph 14 of the section 45 Code of Practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

“...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-focussing their request, information may be able to be supplied for a lower, or no, fee.”

34. The Commissioner notes that Dyfed-Powys Police initially engaged with the complainant to clarify the time period covered by his request. In its refusal notice, Dyfed-Powys Police stated that:

“You may wish to refine and re-submit your request so that it reduces the time shown above to fall within the 18 hours. Should you require advice in relation to this matter please don't hesitate to contact me”.

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

However, in the Commissioner's view, Dyfed-Powys Police failed to explain how to refine the request to bring it within the cost limit, nor did it give the complainant an indication of what, if any, departments or records could be searched within the appropriate limit to identify whether any relevant information was held.

35. In this case, whilst the Commissioner has accepted the cost estimate provided, Dyfed-Powys Police did not, however, provide the complainant with any advice on refining the request. As a result the Commissioner finds that Dyfed-Powys Police breached section 16(1) of the FOIA and at paragraph 3 above it is now required to take remedial action.

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,
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.

Signed

Anne Jones
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