

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2023

Public Authority: Police Federation of England and Wales

Address: Federation House
Highbury Drive
Leatherhead
KT22 7UY

Decision (including any steps ordered)

1. The complainant has requested information about Police Federation of England and Wales (PFEW) National Board member expenses. PFEW refused the request, citing section 12(1) (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that PFEW was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. However, the Commissioner finds that PFEW did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
3. The Commissioner requires PFEW to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant to assist them in submitting a request which may be handled within the appropriate limit.
4. PFEW 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 10 May 2023, the complainant wrote to PFEW and requested information in the following terms:

"Please accept this request under the Freedom of Information Act. I'm seeking:
 - Details of PFEW National Board member expenses for each quarter since Q1 2018."
6. PFEW responded on 8 June 2023. It stated that it does hold relevant information, but refused to comply with the request, citing section 12(1) (cost of compliance exceeds appropriate limit) of FOIA.
7. Following an internal review PFEW wrote to the complainant on 29 June 2023. It maintained its reliance of section 12(1) of FOIA to refuse to comply with the request.

Reasons for decision

Section 12 – cost of compliance

8. Section 12(1) of FOIA provides 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").
9. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for PFEW is £450.
10. 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) of FOIA effectively imposes a time limit of 18 hours for PFEW.
11. 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.
12. 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. In accordance with the First-tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, 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.
13. Section 12 is not subject to a public interest; 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.
14. 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.

Would the cost of compliance exceed the appropriate limit?

15. In this case PFEW explained that its National Board is made up of 24 member elected officials, seconded from their Forces, which lead the organisation strategically. They are elected to roles on a triennial basis.
16. In considering the timeframe set out in the request, PFEW confirmed that 2018 was the last year of a triennial, therefore a new board was voted in that year. Since that time, a further new board has been elected and took up their roles late in 2022 (this was delayed due to Covid). Finally, within the timeframe set out in the request there has been a number of individual elections when officers have stood down from their roles. Therefore, to comply with the request PFEW would need to consider the expenses incurred by at least 72 individuals who were part of the board at some point within the specified timeframe.
17. PFEW explained that whilst its Finance system is able to produce details of each claim for each individual, there is a level of manual checking required. The recording of expenses is not always assigned to a specific expense type, more for an event or situation. Travel and subsistence for example are easily identified, however, purchases by employees for things such as office supplies, external courses or services, etc. are not as easily identified. Additionally, since expenses are made up of a

combination of supplied work credit card and personal repayment, more detailed manual checking is required.

18. PFEW conducted a sampling exercise, by checking and sorting the relevant expenses of 5 officers, which took an average of 20 minutes per officer. It therefore estimated that to check and sort all expenses incurred by the National Board for each quarter since Q1 of 2018 would require it to carry out at least 24 hours of work. PFEW also noted that this estimate does not consider the time taken by the Finance department to locate, retrieve and produce the relevant data prior to it being checked and sorted.
19. The Commissioner noted that PFEW has published some information within the scope of the request on its website, for quarters 3 and 4 of 2022, and for quarters 1 and 2 of 2023. The Commissioner queried whether PFEW had previously compiled the National Board expenses for the timeframe set out in the request in the same or a similar format to the 4 quarters which had been published on the website, which it could utilise to comply with the request.
20. PFEW confirmed that it previously published expenses of the principal officers (not the entire National Board) around 2016/2017 but this was halted due to a cyber attack in 2019. Following the impact of the cyber attack and then the Covid pandemic interfering with its triennial National Board elections, it was decided that once the new Board members had taken up their posts last year, that publication of expenses on its website would recommence from Q3 2022 and include all members of the National Board, not just principal officers. Any data concerning principal officer's expenses predating Q3 2022 was removed from the website and PFEW doesn't hold any backup documents from previously published expenses. Therefore, in order to comply with the request in full, PFEW would still be required to conduct the checking and sorting of expenses for all 72 individuals.
21. The Commissioner considers that PFEW estimated reasonably that it would take more than the 18 hours/£450 limit to comply with the request. PFEW was therefore entitled to refuse the request in accordance with section 12(1) of FOIA.

Section 16 – the duty to provide advice and assistance

22. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making a request for information. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45

code of practice¹ in providing advice and assistance, it will have complied with section 16(1).

23. The Commissioner finds that PFEW did not provide the complainant with any advice and assistance in order that they could submit a refined request which may be able to be dealt with under the appropriate limit. Therefore, PFEW breached section 16 of FOIA.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

24. 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

25. 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.
26. 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

Amie Murray
Team Manager
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Wycliffe House
Water Lane
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