

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2024

Public Authority: Chief Constable of South Wales Police

Address: Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU

Decision (including any steps ordered)

1. The complainant requested various information relating to Automated Facial Recognition (AFR) identifications. South Wales Police (SWP) refused to comply with the request citing section 12 (cost limit) of the FOIA. The Commissioner's decision is that SWP was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that SWP complied with its obligations under section 16 to offer advice and assistance. The Commissioner does not require any steps to be taken.

Request and response

2. On 14 July 2023, the complainant wrote to SWP and requested information in the following terms:
 - "1. For 12 months (1st April 2022-31st March 2023) please state how many suspects have been charged with offences (and state which crimes) as a result of AFR identifications.
 2. In accordance with the Surveillance Camera Commissioner's Code of Practice, 'human intervention' is required before a suspect is arrested as a result of a AFR identification. Please give details of your policy in relation to such intervention.

3. If officers are used to verify identifications, what is the selection procedure for this role and what training do they receive?
4. If you are unable to give statistics re the number of charged, please explain how the Chief Constable is able to measure the monthly identification rate."
3. SWP responded on 1 August 2023 and stated that it was refusing the request under section 12 of the FOIA as compliance with the request would exceed the appropriate limit.
4. On 5 August 2023 the complainant requested an internal review of SWP's handling of the request.
5. SWP provided the outcome of its internal review on 20 September 2023 and upheld its position that section 12 applied to the request.

Scope of the case

6. The complainant contacted the Commissioner on 9 October 2023 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to consider whether SWP correctly applied section 12 of the FOIA to the request.

Reasons for decision

Section 12 – cost of compliance

8. Section 12(1) of 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").
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 SWP 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) effectively imposes a time limit of 18 hours for SWP.
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.
 13. 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.
 14. 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.
 15. 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?

16. SWP explained that the data is not recorded in such a way that would allow it to comply with the request in full within the appropriate limit. It confirmed that it is possible to undertake searches of Niche (its record management system) in order to identify occurrence logs for an RFR1 code. An RFR1 code relates to a potential match made by the identification unit, which is then passed to an investigator in order that further enquiries can be made. It is then the responsibility of the investigator to determine if the match is accurate and to undertake any relevant enquiries to the point of charge.
17. However, SWP explained that an occurrence log can hold details of multiple suspects, some of whom are known and some where it will be necessary to undertake Retrospective Facial Recognition (RFR) to identify a suspect. SWP provided the Commissioner with two examples

in order to explain why manual intervention would be necessary in order to comply with the request in this case, which are detailed below:

"An assault occurs by 2 persons on a single victim. One of the suspects is known to the victim, who identifies the suspect to Officers at the scene. This person is arrested and charged. As a result of the 'known suspect' being arrested and charged, the occurrence will show as having a charge outcome.

Further enquiries are then undertaken to identify the second suspect, who was not known to the Victim but a good quality image is captured of the suspect on local CCTV. This image is run through RFR and a possible match is made. An RFR1 entry would then be placed on the occurrence log for the Officer in case to review and determine if it is a reliable match and to undertake further investigation. If this second suspect then wasn't charged, the occurrence would still show as detected because the first suspect was charged.

Secondly you could have 2 or more suspects identified as a result of RFR on the same occurrence. Again a basic search would only provide us with information of 1 occurrence that had an RFR1 code applied and not the number of suspects.

This also relies on occurrences being properly linked to related matters, for example, the RFR1 could be on a related occurrence but the detections have been claimed elsewhere (for example a suspect could be identified via RFR and the RFR1 outcome be attached to the index occurrence but the suspect gets arrested on another matter and is subsequently charged on a separate occurrence and the crime and detection claimed on the related matter".

18. In order to comply with the request in this case, SWP explained that it would be necessary to undertake significant manual processes in order to examine each instance where an RFR positive match has been made, and then to determine the impact of the match. SWP provided the Commissioner with a detailed explanation of the processes involved in complying with the request, together with associated time estimates, which is summarised below:

- a) Run a basic search of Niche for occurrences with RFR1 codes attached. The results are then transferred into an Excel spreadsheet recording the occurrence number – 15 minutes.
- b) For each occurrence number identified in (a) obtain the occurrence record – one minute per record.
- c) Locate the possible RFR match from the investigation. This is located in the occurrence reports, however, it can contain more

than one report, dependent on how many RFR comparisons have been requested for a particular investigation – one minute, based on one subject match.

- d) Review occurrence report to determine who the match relates to. This is necessary as most reports only provide a Niche ID for the match. As such it needs to be checked against the Niche system as they may not be linked. If they are not linked it would take two minutes per record as a separate search would be required.
 - e) Review custody records to determine if the charge relates specifically to the subject identified by RFR or via another method, and to identify if the charges resulted from the specific occurrence or another. This would be necessary as custody records are not always attached to all occurrences and charges do not always show on the same record. This would take two minutes per record.
 - f) Review related occurrences linked to the index occurrence to identify if the suspect has not been charged on another occurrence if they had not been charged on this index occurrence. SWP explained that if the other occurrences identified "had no associated outcome classifications and no Custody records, the review would likely only take 1 minute to determine if the information was relevant to the request. If there were Custody records or outcome classifications, the entire process above would need to be replicated from the beginning, including a review as to whether the RFR match on the related occurrence had any relevance to the charge on the related occurrence".
 - g) Collate results for each occurrence – one minute.
19. SWP explained that it had run the report on its Niche system (point (a) above) for the period covered by the request and 1219 results were obtained. SWP also confirmed that its timings are based on undertaking a sample case using the processes identified. Based on the processes referred to in paragraph 18 above, SWP's total estimate for compliance with the request is 162 hours, as detailed below:
- a) 15 minutes
 - b) 1219 X 1 minutes = 1219 minutes (20 hours)
 - c) 1219 X 1 minutes = 1219 minutes (20 hours)
 - d) 1219 X 2 minutes = 2438 minutes (40 hours)
 - e) 1219 X 2 minutes = 2438 minutes (40 hours)
 - f) 1219 X 1 minutes = 1219 minutes (20 hours)
 - g) 1219 X 1 minutes = 1219 minutes (20 hours)

The Commissioner's decision

20. The Commissioner is satisfied that the requested information is not held in a readily retrievable form and so the work involved in complying with the request would be considerable. He accepts that, because of the way that the information is recorded, a manual review of each of the 1219 occurrences showing a RFR1 code would be necessary in order to provide the information requested. The Commissioner also notes that even if the estimate was halved it would still significantly exceed the appropriate limit of 18 hours work.
21. Having considered the detailed estimate provided by SWP, the Commissioner finds that it is realistic and reasonable. He therefore accepts that SWP estimated reasonably that to provide the information requested would exceed the appropriate limit and that section 12(1) has been correctly applied in this case.

Section 16 – Advice and Assistance

22. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request, so far as it would be reasonable to expect it to do so.
23. In general, where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
24. In its initial response to the request, SWP advised the complainant that it may be possible to comply with the request if they removed question 1. In correspondence with the Commissioner, SWP stated that the average number of positive RFR1 matches for a month is around 145. As it estimates that it would take eight minutes to review each match to provide the information requested, according to this estimate even to provide one months' worth of data would still exceed the appropriate limit of 18 hours.
25. In light of the above, the Commissioner finds that SWP has complied with its obligations under section 16(1) of FOIA in its handling of the request.

Right of appeal

26. 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

27. 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.
28. 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

Joanne Edwards
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Wycliffe House
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