

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2023

Public Authority: National Police Chiefs' Council
Address: 1st Floor
10 Victoria Street
London
SW1H 0NN

Complainant: Rebecca Fry
Address: RFry@leighday.co.uk

Decision (including any steps ordered)

1. The complainant requested from the National Police Chiefs' Council ('the NPCC') information about the numbers and percentages of Prevent referrals by ethnicity.
2. The Commissioner's decision is that the NPCC was entitled to apply section 12(1) of FOIA and is satisfied that the NPCC met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the NPCC to take any steps.

Request and response

3. On 21 April 2023, the complainant wrote to the NPCC and requested information in the following terms:

"A. The number and percentage of all Prevent referrals disaggregated by ethnicity and type of concern for the years 2015- 2016, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-present.

B. The number and percentage of Prevent referrals that 'Required no further action' disaggregated by ethnicity and type of concern for the

years 2015-2016, 2016-17, 2017-18, 2018-19, 2019-20, 2020- 21, 2021-22, 2022-present.

C. The number and percentage of Prevent referrals that were 'sign-posted to other services' disaggregated by ethnicity and type of concern for the years 2015-2016, 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22, 2022-present."

4. On 16 May 2023 the NPCC replied stating it did not hold the requested information for question B and it was unable to provide the requested information for the remaining parts of the request due to the cost limit. The NPCC applied section 12 of FOIA to the request.
5. This decision was maintained at the internal review dated 5 July 2023.

Scope of the case

6. The complainant contacted the Commissioner on 3 October 2023 to complain about the way their request for information had been handled.
7. The Commissioner considers the scope of this case is to determine if the public authority has correctly applied section 12(1) of FOIA in response to this request. The Commissioner has also considered whether the public authority met its obligation to offer advice and assistance, under section 16 of FOIA.
8. If the Commissioner is satisfied that section 12(1) does not apply, he will then consider whether, on the balance of probabilities, any information is held for question 2.

Reasons for decision

Section 12 - cost of compliance

9. 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").
10. Section 12(2) of the FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the

estimated cost of complying with that paragraph alone would exceed the appropriate limit. The NPCC relied on section 12(1) in this case.

11. 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. Therefore, the "appropriate limit" for the NPCC 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, effectively imposing a time limit of 18 hours for the NPCC to deal with this 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. 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.
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.

17. As is the practice in a case in which the public authority has cited the cost limit under section 12(1) of FOIA, the Commissioner asked the NPCC to provide a more detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
18. The NPCC advised the Commissioner that this request is focussed on Prevent referrals broken down by ethnicity and type of concern. Ethnicity is not a mandatory field within the Prevent Referral, which means that the ethnicity field within the Prevent Case Management Tracker (PCMT) database can be left blank.
19. Ethnicity data is, however, sometimes recorded within the 'Notes' section of the case/PCMT. This means that to locate, retrieve and extract all the possible ethnicity information where the ethnicity field is left blank, the case/PCMT record will need to be manually opened and the different 'entries' examined for ethnicity data. The NPCC advised that even if it were to check both the ethnicity field and the notes section, some cases will not have any record of the individual's ethnicity.
20. For the data period sought by the requestor ie 2015 to 21/04/2023 (the date of the request), there are 33,116 referrals with no ethnicity recorded. In order to determine a rough estimate of how long it would take to retrieve the data from these records, 10 PCMT records were examined which took an average of 20.3 minutes to open and review each case for ethnicity information.
21. The NPCC advised that for each PCMT there are multiple entry fields, all of which would require reviewing where the ethnicity field had not been completed. It explained that those with less entries could be reviewed much faster than those with larger number of entries. For example, one PCMT record had 16 entries which took a total of 5 minutes to review, whilst a different record reviewed had 228 entries took an hour and 15 minutes to review.
22. With an average of 20.3 minutes and 33,116 records to examine, the time required to locate, retrieve and extract the information captured by the request would be in excess of 11,038 hours. This grossly exceeds the 18-hour cost limit. Even if the estimate to review the files was cut in half, the sheer scope of the request would still be far in excess of the cost limit.
23. The Commissioner's overall conclusion is that the NPCC has estimated reasonably that it would take more than the 18 hours/£450 limit to respond to the request. The NPCC was therefore correct to apply section 12(1) of FOIA to the complainant's request.

24. As the Commissioner is satisfied that the NPCC is entitled to rely on section 12(1) he will not be considering whether any additional information within the scope of the request is held. Section 12(1) applies to the entirety of the request.

Section 16(1) – duty to provide advice and assistance

25. Section 16(1) of FOIA provides that a public authority should give reasonable advice and assistance to any person making an information request. 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). The FOIA code of practice states that, where public authorities have relied on section 12 to refuse a request, they should:

“provide applicants with advice and assistance to help them reframe or refocus their request with a view to bringing it within the cost limit”.

26. The NPCC advised the complainant that when making a future request for this matter, a much shorter timeframe would be more suitable. The NPCC also advised that information requested should also be restricted to information contained within the Prevent databases.
27. The Commissioner is satisfied that the NPCC met its obligation under section 16 of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

28. 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

29. 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.
30. 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 

Michael Lea
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