

**Met HQ Strategy & Governance
Information Rights Unit**

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Your ref:
Our ref: 2017010001023

03 October 2017

Dear Mr Pearsall

Freedom of Information Internal Review Reference No: 2017010001023

I write in connection with your correspondence dated 26/01/2017 in which you requested an internal review in relation to Freedom of Information Act (FOIA) request reference number 2016120000494.

Your FOIA request was as follows:

‘Please disclose a full list of officers who were on duty during the million mask March 16.

Please detail :

**Collar number / employee number
Rank / Position / job title
Shift worked (hours)
Was a bwvc worn?**

**Please also list number of arrests made during Mmm16, including Suspected offence Further action
Arresting officer’**

DECISION

The Metropolitan Police Service (MPS) has completed its review and has decided to:

- Uphold the original decision

Having considered the request, I have determined that the MPS was not required to comply with your request due to the following provisions of the Freedom of Information Act:

- Section 12(1) - Cost of compliance exceeds appropriate limit
- Section 17(5) - Refusal Notice

Procedural errors were made in relation to time compliance (section 10) and the duty to assist (section 16).

The MPS has failed to comply with Section 1 (right of access to information) and Section 17 (refusal notice) only to the extent that your request was not responded to within 20 working days.

REASON FOR DECISION

Please see the legal annex for the sections of the Freedom of Information Act 2000 and related documents that are referred to in this letter.

The Freedom of Information Act 2000 creates a statutory right of access to information held by public authorities. Section 1(1) of the Act requires a public authority in receipt of a request to:

- Confirm whether they hold the requested information and if so,
- Communicate the requested information to the applicant.

Furthermore, the Freedom of Information Act is designed to place information into the public domain. Therefore, once access to information is granted to one person under the Act, it is then considered to be public information and must be communicated to any individual upon request. In accordance with this principle, the MPS operates an applicant-blind and motive-blind approach to FoIA requests and routinely publishes information disclosed under the Freedom of Information Act on the MPS Internet site¹.

The right of access to information is subject to a number of exemptions that are designed to enable public authorities to withhold information that is not suitable for release.

Section 12 - Exemption where cost of compliance exceeds appropriate limit

Under Section 12 of the Freedom of Information Act 2000, public authorities are not required to comply with a request for information if the cost of compliance exceeds the appropriate limit.

The appropriate limit has been specified in regulations and for agencies outside central Government; this is set at £450.00. This represents the estimated cost of one person spending 18 hours [at a rate of £25 per hour] in determining whether the MPS holds the information, and then locating, retrieving and extracting the information.

¹ http://www.met.police.uk/foi/disclosure/disclosure_log.htm

The Information Commissioner's Office (ICO) Guidance titled 'Requests where the cost of compliance with a request exceeds the appropriate limit'² states:

'9. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs 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.'*

The ICO guidance further states:

'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'

'A public authority is not obliged to search up to the appropriate limit.'

In response to your request, enquiries were carried out within the MPS Public Order Branch (SCO22) that established that in excess of 2,000 officers were on duty in relation to the Million Mask March.

In your correspondence, you have requested 'a full list of officers who were on duty during the million mask March 16' further broken down by various details.

The information requested is not centrally held and would require significant effort to obtain, requiring searches of a wide variety of systems, both manual and electronic to obtain the necessary information. This would involve the gathering of information from numerous different specialist departments as well as the geographical hubs that support Territorial Policing (borough officers).

To obtain the Body Worn Video (BWV) data, each of the 2,000+ officers would have to be contacted and asked if they wore BWV.

To obtain details of shift hours worked, police serial feedback forms (form 3166s) would need to be examined manually for deployment information against each individual officer and cross-checked against CARMS (Computer Aided Resource Management System).

This would likely require the creation of a new spreadsheet to record the data collated from different sources.

Using **2,000** records as a basis, it would be necessary to retrieve and extract all the information relevant to a particular police officer within **33 seconds** on average. This has been calculated by dividing the appropriate cost limit (18 hours or 1,080 minutes) by the number of records (**2,000**) i.e. $1,080 / 2,000$. This equals **0.54** which equates to **32.4 seconds**.

² https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

The far ranging nature of the information requested and the number of variables also make estimating the total amount of time required to comply with your request difficult which is why I have provided a reasonable estimate of the time necessary to determine the information held per police officer within the appropriate cost limit.

This is a conservative estimate as there were actually in excess of 2,000 police officers on duty.

With the above considerations in mind, I estimate that it would exceed the appropriate cost limit to comply with your request, specifically to determine whether the requested information is held (including the extent to which information is held).

Consequently, the MPS is not required to comply with your request subject to the provisions of Section 12(1) and Section 17(5) of the Freedom of Information Act 2000.

Procedural issues

Section 1 of the Freedom of Information Act 2000 states:

‘(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him.’

(2) Subsection (1) has effect subject to the following provisions of this section...

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and
(b) has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

Section 10(1) of the Freedom of Information Act 2000 states:

‘Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.’

Furthermore, the Information Commissioner’s Office has issued good practice guidance³ that indicates that the total time taken to respond to a request should not exceed 40 working days.

The MPS received your request on 13/12/2016. A response was provided to you on 24/01/2017.

³ <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

In the circumstances of your request, neither the information requested nor a refusal notice was provided to you within 20 working days. Therefore, the MPS have not complied with the requirements of section 10 of the Act.

Section 16(1) of the Act places a duty on public authorities to provide reasonable advice and assistance to applicants. Section 16(2) states that:

‘Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.’

The Section 45 Code of Practice states:

‘Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority 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-focusing their request, information may be able to be supplied for a lower, or no, fee.’

The MPS response provided information in relation to the number of arrests that were made. However, I note that you were not advised as to how your request could be reformed or refined so that information in relation to the 1st part of your request (i.e. a list of officers who were on duty) could be provided within the appropriate cost limit.

The ICO’s guidance titled ‘Requests where the cost of compliance exceeds the appropriate limit’⁴ suggests that it would be ‘undesirable practice’ to provide part of the requested information and refuse the rest of the request under section 12. This is because such an approach assumes that the requestor would rather have the information provided rather than receive information in response to a different formulation of the request. This assumption may be incorrect.

The MPS response advised that:

‘There were 53 arrests as the Million Mask March made its way through central London.’

However, you were not provided with advice as to how your request could be refined so that it could be answered within the cost limit.

Section 16 - Advice and assistance

In order for the MPS to be able to provide information in relation to your request, it would be necessary to narrow the scope of your request so that it may be possible to identify and retrieve the information requested within the appropriate cost threshold. You may wish to remove the requirement to provide information relating to the use of BWV or the number of hours worked.

⁴ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

In recognition of the delay in providing you with a response to your request for an internal review and as a gesture of goodwill, I can provide you with the number of officers on duty broken down by rank which is as follows:

- 1 x Commander
- 5 x Chief Superintendents
- 8 x Superintendents
- 19 x Chief Inspectors
- 99 x Inspectors
- 396 x Police Sergeants
- 2,190 x Police Constables

This equates to 2,718 Police Officers on duty in total.

In relation to the 53 arrests made during the march, the related offences were classed as follows:

- 17 x Drugs
- 10 x Obstruction
- 8 x Other
- 8 x Public Order.
- 6 x Offensive Weapon
- 3 x Assault on police
- 1 x Criminal damage

Information relating to employee numbers, arresting officers and further action may engage one or more FoIA exemptions.

I would like to take this opportunity to apologise on behalf of the MPS for any inconvenience caused by the time taken to respond to your Freedom of Information Act request and subsequent request for an internal review. The issues you have raised have been recorded and they will enable us to provide a more efficient and effective service in the future.

If you are dissatisfied with this FoIA internal review, you have the right to appeal the decision by contacting the Information Commissioner for a decision on whether your request has been dealt with in accordance with the requirements of the Act.

For information on how to contact to the Information Commissioner please visit their website at www.ico.org.uk. Alternatively, phone or write to:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Phone: 0303 123 1113

Yours sincerely

Brian Wilson
Information Law Advisor

LEGAL ANNEX

Section 1 (General right of access to information held by public authorities) of the Freedom of Information Act 2000 states:

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

<http://www.legislation.gov.uk/ukpga/2000/36/section/1>

Section 12(1) and 12(2) (Exemption where cost of compliance exceeds appropriate limit) of the Freedom of Information Act 2000 states:

- (1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

<http://www.legislation.gov.uk/ukpga/2000/36/section/12>

Section 16 (Duty to provide advice and assistance) of the Freedom of Information Act 2000 states:

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

<http://www.legislation.gov.uk/ukpga/2000/36/section/16>

Section 17(5) (Refusal of a request) of the Freedom of Information Act 2000 states:

- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

<http://www.legislation.gov.uk/ukpga/2000/36/section/17>

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 state:

The appropriate limit

3.—(1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

<http://www.legislation.gov.uk/ukxi/2004/3244/regulation/3/made>

Estimating the cost of complying with a request – general

4.—(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request—

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in—

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

<http://www.legislation.gov.uk/ukxi/2004/3244/regulation/4/made>

Estimating the cost of complying with a request – aggregation of related requests

5.—(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which—

(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and

(b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

<http://www.legislation.gov.uk/ukxi/2004/3244/regulation/5/made>

Part II of the Code of Practice issued under Section 45 of the Freedom of Information Act states:

Limits to advice and assistance

12. If, following the provision of such assistance, the applicant still fails to describe the information requested in a way which would enable the authority to identify and locate it, the authority is not expected to seek further clarification. The authority should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption. It should also explain to the applicant why it cannot take the request any further and provide details of the authority's complaints procedure and the applicant's rights under section 50 of the Act (see "Complaints Procedure" in section VI).

Advice and assistance and fees

14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority 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-focusing their request, information may be able to be supplied for a lower, or no, fee.'

<http://webarchive.nationalarchives.gov.uk/20120215124400/http://www.justice.gov.uk/downloads/guidance/freedom-and-rights/foi-section45-code-of-practice.pdf>