

PROTECT PERSONAL

Our Ref: 159.2015-16 Review

Your Ref:

Date: 08 January 2016

Angela Snodgrove / request-268633-  
5981853d@whatdotheyknow.com



Police and Crime  
Commissioner  
North Yorkshire



Dear Ms Snodgrove,

**FREEDOM OF INFORMATION REQUEST REFERENCE NO: 159.2015-16 Internal Review**

I refer to your email correspondence dated 17 June 2015 and the 30 June 2015, where you have requested an internal review into length of time taken to response to your request and the decision made by Emma Morris, who exempted information pursuant to the provisions of Section 12 of the Freedom of Information Act 2000 (the Act).

I note that your review refers to your original request dated 18 May 2015 about North Yorkshire Police Civil Action Against Citizen Journalists.

In reference to your request on the 17 June 2015, the Civil Disclosure Unit does strive to meet the 20 day deadline date however in any request there may be complex issues and the way police information is kept does not always mean the information requested is in the format required in the question. The availability of key stakeholders able to provide the requested information is always a factor in that they may have to prioritise other urgent operational issues. Your original request relates to a very complex and sensitive case with ongoing court proceedings, therefore any requests received need to be treated in an appropriate manner. I can therefore only apologise again for the delay in responding to your request.

In reference to your correspondence dated 30 June 2015, I have reviewed your request and the response which was provided to you and can confirm that the response provided was correct, as when one part of your request falls under Section 12 we are not obliged to review the rest of the questions and the whole request is therefore exempt. Given the sensitive nature of your request, you were invited to contact our office to discuss how you could refine your request in order for it to fall within the cost threshold, however you declined to do so and instead requested an internal review.

The internal review looks at how your original request was dealt with and albeit the delay in the response, I am satisfied that the exemption of Section 12 was used correctly and that Section 16 was applied, as the offer to contact our office to discuss refinements was made.

In light of your further correspondence, I have further reviewed your Freedom of Information request and, rather than advising you how you may wish to refine your request and as a gesture of goodwill, I have provided the information that can be retrieved within the time limit allowed (subject to exemptions that apply). I have also highlighted the questions, where necessary, that are fully exempt under Section 40 – Personal Information, along with those where information is not held. I have also shown the questions that fell under Section 12 – Excess cost, as stated in your original response, which are still exempt under S.12.

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Jane Wintermeyer BSc (Hons) Acting Force Solicitor & Head of Legal Services  
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In addition, I note that you have sent further requests, referenced 602 – 611.2015-16. These are duplicate questions to the ones covered under 159.2015-16, therefore they will not be answered separately as the answers are provided below. Any requests for internal reviews to 602-611 will also not be considered as they have already been dealt with under this request.

### **Question 1**

***Will you please advise the date on which the final compilation of estimated costs was completed by Joint Corporate Legal Services and submitted to the Chief Constable and/or the Police Commissioner for consideration/approval/information, whichever the case may be.***

The estimated costs were finalised on the 12 January 2015 and submitted to the Chief Constable and Police and Crime Commissioner.

### **Question 2**

***Will you please give me sight of that document, and advise the name and position of the signing authority that approved the final document, or wrote the covering memo, as the case may be.***

The estimated costs were approved by Jane Wintermeyer – Temporary Head of Legal Services.

The costings document is contained within Legally Privileged documentation and is therefore exempt under Section S42 - Legal Professional Privilege. Please see the exemption explanation below.

However, information was extracted from the document to provide you with a breakdown of the costs in your response referenced 983.2014-15. I have incorporated this again for you below.

*The cost breakdown is below, but you should note an important caveat. The figure was arrived at following a manual estimate by the departments involved. This is the best estimate of costs that can be provided, and is the recorded information held in answer to your query.*

- *Police officer time from December 2011 to September 2014; 94.6 months - £386,347*
- *Legal services work from October 2010 to June 2014; 243.1 hours - £7,424.73*
- *Civil disclosure work from September 2011 to October 2014; 352 hours - £5,181.44*
- *Related complaints matters; 82 hours - £1,708.88*
- *Chief Officer time; 259.08 - £9,308.85*

### **Exemption Explanation**

#### **S42 - Legal Professional Privilege**

I am exempting the information you have requested for question 2 and 6 pursuant to Section 42 of the Freedom of Information Act 2000 (the Act), as the information is subject to legal professional privilege.

Section 42 is a qualified class-based exemption, which means that consideration must be given to the public interest in disclosure or non-disclosure of the information, but there is no requirement to demonstrate any harm that may occur in the event of the information being disclosed.

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Public Interest Considerations – Section 42

Factors favouring Disclosure

This is a situation concerning the expenditure of public funds in respect of a civil claim, and so there is a clear public interest in ensuring that any such action is lawful.

Factors favouring non-Disclosure

The principle of legal professional privilege is enshrined in history and must be respected.

The information concerned is the legal advice of the Force Solicitor to the Chief Constable and Commissioner and is inextricably linked to on-going Civil Litigation. To disclose such advice would waive legal professional privilege and risk undermining the relationship between Solicitor and client.

Legal Professional Privilege is applied to communications between a lawyer, acting in their capacity as a lawyer, and a client, and is privileged if they are both:

- Confidential, and
- For the purpose of seeking legal advice from a solicitor or providing it to a client

The protection applies only to those communications which directly seek or provide advice or which are given in a legal context, that involve the lawyer using his legal skills and which are directly related to the performance of the lawyer's professional duties. This applies to the documentation in this case.

Disclosure may risk an adverse impact on future advice given by the Force Solicitor to the Chief Constable and Commissioner.

There are existing mechanisms in place for scrutinising and holding the Chief Constable and Police and Crime Commissioner to account for their actions.

Balancing Test

The principle of legal professional privilege is fundamental and although there is a public interest in ensuring the basis of any action by a public authority is lawful, in this case the factors favouring non-disclosure outweigh those favouring disclosure.

**Question 3**

***Please advise how many different departments were involved in the submission of the “best estimate” expenses, and which departments submitted the information.***

The following departments were involved:

- Operational officer team
- Legal Services
- Chief Officer Team
- Civil Disclosure
- Office of the Police and Crime Commissioner

**Question 4**

***Please advise the dates on which the project to compile these costs from the different departments was (a) commenced, and (b) completed.***

The compilation of the costings was verbally requested on the 03 October 2014 and submitted on the 12 January 2015.

**Question 5**

***Please advise who made the recommendation to commence the project to compile costs, who approved the decision, and the date of the approval to commenced the project.***

The Police and Crime Commissioner and the Chief Constable were the individuals who requested the information on the date above.

**Question 6**

***May I please have sight of any memorandum or document with regard to (4) and (5) above?***

The information you have requested is held within Legally Privileged documentation and is therefore exempt under Section S42 - Legal Professional Privilege. Please refer to the explanation given in question 2.

**Question 7**

***Please advise how many different police personnel were involved in the expenditure of officer time ("Police officer time from December 2011 to September 2014; 94.6 months - £386,347 "), and what their formal positions were at the time.***

The estimate provided relates to 14 members of police personnel. I am exempting their formal positions under Section 40 – Personal Information. (See below)

**Exemption Explanation**

**Section 40 – Personal Information**

I am exempting the formal positions pursuant to Section 40(2) of the Freedom of Information Act 2000 (the Act).

Where an individual can be identified by such data, releasing it would clearly breach the first data protection principle of being 'fair' to the data subject.

Section 17 of the Act requires North Yorkshire Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 40(2)(b) is an absolute class based exemption, which does not require a public interest test, but requires the balancing of the legitimate interests of the public against the interests of the individual under the first Data Protection Principle (that of 'fairness').

This exemption applies because the right given under the Act to request official information held by public authorities does not apply to the personal data of third parties where disclosure of that

information would not be fair to the individual, and where there is no legitimate public interest in disclosure.

Pursuant to Section 17(1) of the Act this letter acts as a refusal notice under the Freedom of Information Act 2000 in relation to your request.

**Question 19**

***Will you please give me the date on which a decision was made to commence civil action, name the decision maker, and give me sight of any documentation which refers this decision?***

It was on or around the 19 January 2015 that the decision to take civil action was taken.

Further information is provided within the Decision Notice 011/2015, which is published on the Police and Crime Commissioners website and can be accessed through the following link.

<http://www.northyorkshire-pcc.gov.uk/taking-action/making-decisions/decisions-made/0112015-formal-support-and-explanation-from-the-police-and-crime-commissioner-regarding-the-funding-of-ongoing-civil-litigation-action-to-protect-officers-and-members-of-the-public-against-alleged-p/>

**Question 22**

***How much costs have been incurred between June 2014 and the date of this Freedom of Information request with regard to this civil action. Please break these costs down by (a) police officer time (b) legal services (c) Chief Constable's time (d) other.***

As at 18<sup>th</sup> May 2015, the costs incurred by North Yorkshire Police in the civil case were as follows:

- External Solicitor costs (including court fees and other disbursements) - £107,407.94
- Counsel costs - £34,330

Staff and officer time in dealing with this civil matter is not recorded as a matter of routine course and so there is no recorded information held in response to that element of your question.

**Question 25**

***(a) With regard to the current civil action, what are the costs incurred, from the decision to take civil action to date, of legal services provided by North Yorkshire Police legal personnel and staff (including liaising, interviewing, and communicating) with respect to applicants/plaintiffs included in the action who are not currently employed by North Yorkshire Police, the Police and Crime Commissioners Office, or North Yorkshire Police Authority, and***

There is no information held as external solicitors have been engaged to conduct the civil litigation.

***(b) those who never were employed by North Yorkshire Police, the Police and Crime Commissioners Office, or North Yorkshire Police Authority at the time of the alleged harassment incidents?***

There is no information held as external solicitors have been engaged to run the civil litigation.

**Question 26**

***How many external legal firms are engaged for the purpose of civil action to be taken against the three named persons in the allegations of harassment, what is the cost to date, and what portion is to be financed by any private citizens involved as applicants/plaintiffs in this action?***

One legal firm is acting on behalf of the Claimants in the civil action.

- External Solicitor costs (including court fees and other disbursements) - £107,407.94 (this is up to the 18 May 2015).

Any information regarding whether or not there was any private financing is held within legally privileged documents.

**Question 27**

***Please name the legal firms engaged for this purpose.***

Weightmans (previously known as Ford & Warren Solicitors).

**Question 28**

***How many Freedom of Information requests, in total, have been received by North Yorkshire Police in relation to the civil action and/or the newspaper articles, such as this one?***

<http://www.yorkpress.co.uk/news/11807294.Police-taking-civil-action-against-three-men-claimed-to-be-conducting-a-campaign-of-personal-harassment/?ref=mr>

Up until the 18<sup>th</sup> May 2015 (inclusive) there have been 10 requests under this matter.

**Question 29**

***How many FOI responses have been completed in this respect?***

Of the 10 requests 7 responses were completed prior to the receipt of your request.

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**Questions that are exempt under Section 40 - Personal Information**

**Question 9**

*How many visits were made to the accused to speak with them about complaints/harassment allegations prior to the commencement of civil action? What were the dates of the visits?*

**Question 10**

*How many written warnings and/or communications were issued to the accused prior to the commencement of civil action? What dates were these communications sent?*

**Question 11**

*On what dates were arrest warrants issued and served, or attempted, and criminal charges laid or attempted against the accused, and against whom specifically?*

**Question 15**

*With reference to " Chief constable Dave Jones is one of nine applicants going to court to get an injunction against three men the force says are waging "a campaign of personal harassment" that has cost the public purse more than £400,000.<http://www.yorkshirepost.co.uk/news/main-topics/general-news/citizen-journalists-hit-back-over-legal-action-to-close-down-media-by-north-yorkshire-police-1-7121931> will you please name the other eight applicants. Please indicate which and/or how many of these applicants is currently serving with North Yorkshire Police, the Police and Crime Commissioner's Office, or the North Yorkshire Police Authority.*

**Question 16**

*Please indicate which, and/or how many, of these applicants is not currently employed by any of the above agencies?*

**Question 17**

*Please indicate which, and/or how many, of these applicants never were, at any time, employed by any of the above agencies.*

**Question 18**

*On what dates were actions taken by police officers or the Chief Constable to stop the alleged harassment under Section 2 of Domestic Violence, Crime and Victims Act 2004, Section 1 Malicious Communications Act, 1988, or any other appropriate criminal legislation. Please include details of police and/or legal department actions taken to stop the alleged harassment on those dates, including warning the alleged offenders, and/or any charges that were laid, or warrants issued.*

**Exemption Explanation**

**Section 40 – Personal Information**

I am exempting questions 9, 15, 16, 17 & 18 pursuant to Section 40(2) of the Freedom of Information Act 2000 (the Act).

Where an individual can be identified by such data, releasing it would clearly breach the first data protection principle of being 'fair' to the data subject.

Section 17 of the Act requires North Yorkshire Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 40(2)(b) is an absolute class based exemption, which does not require a public interest test, but requires the balancing of the legitimate interests of the public against the interests of the individual under the first Data Protection Principle (that of 'fairness'.)

This exemption applies because the right given under the Act to request official information held by public authorities does not apply to the personal data of third parties where disclosure of that information would not be fair to the individual, and where there is no legitimate public interest in disclosure.

In all the circumstances of this instance it has been determined that the duty to the individual under the Data Protection Act 1998, and the public interest in maintaining the exemption from disclosure of personal information held by the force in such cases, outweighs the public interest in disclosure.

Releasing personal details to a person other than the data subject would not only breach the data subject's Data Protection rights it may also breach the obligations placed on an authority under the European Convention on Human Rights.

Pursuant to Section 17(1) of the Act this letter acts as a refusal notice under the Freedom of Information Act 2000 in relation to your request.

Additionally, North Yorkshire Police can neither confirm nor deny that it holds any of the information you have requested. To either confirm or deny that the information is held would disclose that individuals had, or had not, received visits, warning or warrants, which itself is personal information and therefore exempt under Section 40(5)(b) of the Act. To the extent that Section 40(5)(b) applies, North Yorkshire Police has determined that in all the circumstances of the case the public interest in maintaining the exclusion of the duty to neither confirm nor deny outweighs the public interest in confirming or denying whether or not information is held.

Pursuant to Section 17(4) of the Act this letter also acts as a refusal notice in relation to the duty to confirm or deny.

### **Questions where no information is held**

#### **Question 23**

*What is North Yorkshire Police's best estimate of the (a) legal costs (b) officer and Chief Constable, and (c) court costs that would be likely to result from criminal charges being laid, as opposed to civil action, and who made this comparison before making the decision to take civil action?*

#### **Question 24**

*(a) On what date was this comparison/evaluation made?*

*(b) May I please have sight of the evaluation document?*

**Questions that were and still are exempt under Section 12 – Excess Cost**

**- as per your previous response**

**Question 8**

*Please advise each type of process, work or task undertaken by each officer in relation to your response here, "Police officer time from December 2011 to September 2014; 94.6 months - £386,347 ". For example, "visiting the accused and issuing warnings", or "writing to the accused", or "meeting with complainants and taking statements", or "surveillance of accused".*

**Question 12**

*How many telephone calls were made to the accused regarding harassment allegations prior to the commencement of civil action?*

**Question 13**

*What portion of the "Police officer time from December 2011 to September 2014; 94.6 months - £386,347 " was spent writing to the accused for any reason whatsoever in relation to harassment allegations, criminal or civil, prior to the commencement of the current civil action, and what was the objective of the written communication?*

**Question 14**

*What portion of the "Legal services work from October 2010 to June 2014; 243.1 hours - £7,424.73" was spent writing to the accused for any reason whatsoever in relation to harassment, and what was the objective of the written communication?*

**Question 20**

*How much of the (a) "Police officer time from December 2011 to September 2014; 94.6 months - £386,347 ", (b) Legal services work from October 2010 to June 2014; 243.1 hours - £7,424.73, and (c) Chief Officer time; 259.08 - £9,308.85 was incurred in direct contact with applicants who are not currently employed either by North Yorkshire Police, the Police and Crime Commissioners Office, or North Yorkshire Police Authority, either in person, by phone, or by written communications.*

**Question 21**

*How much of the (a) "Police officer time from December 2011 to September 2014; 94.6 months - £386,347 ", (b) Legal services work from October 2010 to June 2014; 243.1 hours - £7,424.73 (c) Chief Officer time; 259.08 - £9,308.85 was incurred in research of law, investigation of allegations, background investigation in connection with applicants who are NOT currently employed either by North Yorkshire Police, the Police and Crime Commissioners Office, or North Yorkshire Police Authority.*

Following a review of your request and after careful consideration, I have concluded that the Mrs Morris' decision to exempt your request dated 18 May 2015 under Section 12 was correct.

Furthermore, following the above review you have now been provided with the answers that would have been suggested within the Section 16 refinement, had you contacted our department.

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Yours sincerely

Caroline Williams  
Legal Officer (Civil Disclosure)  
Joint Corporate Legal Services

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