

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2018

Public Authority: Chief Constable Warwickshire Police

Address: Freedom.Information@warwickshire.pnn.police.uk

Decision (including any steps ordered)

1. The complainant requested information relating to The Atherstone Hunt's New Year meet.
2. Warwickshire Police provided some information within the scope of the request but refused to provide the remainder citing sections 31(1)(a) (law enforcement) and 40(2) (personal information) of the FOIA.
3. The Commissioner investigated its application of the exemption at section 31(1)(a).
4. The Commissioner's decision is that section 31(1)(a) of the FOIA was applied appropriately to the withheld information.
5. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

6. On 5 January 2017 the complainant wrote to Warwickshire Police and requested information in the following terms:

"The reasons for Warwickshire Police's decision not to attend a protest of The Atherstone Hunt on 2 January 2017 in Atherstone Market Square

The name(s) and number(s) of the person(s) responsible for making that decision

Copies of internal correspondence (emails, meeting notes and recorded phone calls) relating to The Atherstone Hunt's New Year

*meet leading up to the event itself ie everything before 12:00
02/01/2017*

The cost of employing the helicopter on 02/01/2017".

7. Warwickshire Police responded on 8 February 2017. It denied holding the requested information about the cost of employing the helicopter (part (4) of the request). It provided information within the scope of parts (1) and (2) of the request but refused to provide the information (namely, copies of internal correspondence) requested at part (3) of the request. It cited the following exemptions as its basis for doing so:
 - section 31(1)(a) - law enforcement
 - section 40(2) - personal information.
8. Following an internal review, Warwickshire Police wrote to the complainant on 16 March 2017. It provided further information in respect of part (2) of the request and upheld its original position in respect of part (3).

Scope of the case

9. Following earlier correspondence, on 14 November 2017 the complainant provided the Commissioner with the necessary documentation to support his complaint about the way his request for information had been handled. He disputed Warwickshire Police's refusal to provide the information requested at part (3) of the request.
10. The complainant considered that '*an acceptable alternative to a blanket refusal*' was for the information to be redacted where it could identify individuals. He was also of the view that any strategic/tactical information placed into the public domain:

"does not innately provide opportunity for disruption".
11. During the course of the Commissioner's investigation, Warwickshire Police confirmed its application of sections 31(1)(a) and 40(2) of the FOIA to the information requested at part (3) of the request. Warwickshire Police confirmed that it considered section 31(1)(a) was applicable to all the information held in relation to part (3) of the request.
12. The analysis below considers Warwickshire Police's application of exemptions to the information within the scope of that part of the request.

13. The Commissioner has first considered its application of section 31(1)(a).

Reasons for decision

Section 31 - law enforcement

14. Section 31(1) of the FOIA states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

(a) the prevention or detection of crime ...".

15. Section 31 of the FOIA is a prejudice based exemption and is qualified. It is therefore subject to the public interest test. This means that, not only does the information have to prejudice one of the purposes listed but, before the information can be withheld, the public interest in maintaining the exemption must outweigh the public interest in its disclosure.
16. In order for the exemption to be engaged, the following criteria must be met:
- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie whether disclosure 'would be likely' to result in prejudice or 'would' result in prejudice.
17. The relevant applicable interests cited in this exemption are the prevention or detection of crime.
18. In correspondence with the complainant, Warwickshire Police explained that with any event involving a public gathering, police and partner agencies monitor and review information and intelligence and undertake a risk assessment to ensure appropriate measures are in place.

19. It told him that:

"Paperwork generated during the planning for any event or gathering will include operational and tactical information, intelligence and in some cases the names of individuals".

20. In support of its application of section 31(1)(a), Warwickshire Police told the complainant that putting such information into the public domain:

"... would provide valuable information to individuals intent on causing disruption or committing criminal activities at or during future events".

21. In correspondence with the complainant Warwickshire Police explained that any disclosure under the FOIA is disclosure to the world at large. It told him that disclosure in this case:

"... would be in direct conflict with the purpose of pre-planning for up and coming events".

22. Describing the issues surrounding hunt events as '*extremely sensitive and complex*' Warwickshire Police told the Commissioner that disclosure of the requested information would be likely to result in escalated unrest.

23. The complainant disputed the view that disclosing the withheld information would prejudice the prevention or detection of crime. In that respect he told Warwickshire Police, for example, that:

- the event had passed and so could not be disrupted; and
- there was no indication that peaceful protestors intended to commit criminal offences.

Is the exemption engaged?

24. With regard to the first criterion of the three limb prejudice test described above, the Commissioner accepts that potential prejudice to law enforcement activity relates to the interests which the exemption contained at section 31(1)(a) is designed to protect – the prevention or detention of crime.

25. With regard to the second criterion, having considered the withheld information, the Commissioner is satisfied that it comprises operational/tactical information. She accepts that there is a causal link between the disclosure of the information and the interests which the exception contained in section 31(1)(a) of the FOIA is designed to protect.

26. With respect to the third criterion, the Commissioner notes that Warwickshire Police was concerned about the likely impact of disclosure on future policing operations. It acknowledged that information relating to previous operations surrounding events where the public are likely to gather is a consideration when planning for future events.
27. Given the potential consequences of disclosure, the Commissioner is satisfied that, on this occasion, the resultant prejudice which Warwickshire Police considered would be likely to occur is one that can be correctly categorised as real and of substance.
28. Accordingly, the Commissioner is satisfied that the exemption contained at section 31(1)(a) is engaged.

The public interest test

29. Section 31 of the FOIA is a qualified exemption and the Commissioner must consider therefore whether or not, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 31(1)(a) of the FOIA outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

30. In support of his view that the information should be disclosed, the complainant told Warwickshire Police:

".. this was a pre-planned gathering in a public place, at which trouble had been reported in previous years. In the interests of transparency, and given the history of the event, the public has the right to understand why the police decided not to attend, and how they reached their conclusion of 'low risk'".

31. Warwickshire Police accepted that disclosure in this case would contribute to the openness and transparency of Warwickshire Police.

Public interest arguments in favour of maintaining the exemption

32. In correspondence with the complainant, Warwickshire Police argued that it would not be in the public interest to release information that could compromise its responsibilities in relation to enforcing the law, preventing and detecting crime and protecting the community it serves.
33. It told him:

"Releasing information that has the potential to compromise operational planning for future public events (e.g. a carnival, a protest, a charity event), would not be in the public interest".

34. In its submission to the Commissioner, Warwickshire Police told her that disclosure of the requested information could lessen the effectiveness of planning for future events to ensure that such events are peaceful and that the police are properly deployed to tackle any issues that may arise.

Balance of the public interest test

35. The Commissioner recognises that it is important for the general public to have confidence in the police service which is responsible for enforcing the law. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
36. She also recognises that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime.
37. The Commissioner acknowledges the argument that information/intelligence gathered in relation to previous public events is used in the operational planning of future events to ensure the events are peaceful and that the police are properly deployed to tackle any issues that may arise.
38. In the circumstances of this case, she recognises the strong public interest in preventing individuals – and organised groups - intending to attend events involving a public gathering from having access to information which, in the wrong hands, would provide an insight into operational planning which could assist them to adjust their behaviour accordingly. Clearly, the disclosure of any information that would assist people to cause disruption or commit unlawful activities would not be in the public interest.
39. The Commissioner has weighed the public interest in avoiding the prejudice to the prevention or detection of crime against the public interest in the openness and transparency of Warwickshire Police and the complainant's arguments regarding disclosure. Her conclusion is that the public interest in maintaining the exemption outweighs the public interest in disclosure.
40. Accordingly the Commissioner is satisfied that section 31(1)(a) of the FOIA was applied appropriately in this case.

Section 40 – personal information

41. Warwickshire Police had additionally relied on the section 40(2) FOIA exemption. As the Commissioner has concluded that all of the relevant

information had been withheld correctly by virtue of section 31(1)(a) of the FOIA, she did not consider the application of the personal information exemption.

Right of appeal

42. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.
44. 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

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