

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 June 2023

Public Authority: Chief Constable of Merseyside Police
Address: Merseyside Police HQ
Canning Place
PO Box 59
Liverpool
Merseyside
L69 1JD

Decision (including any steps ordered)

1. The complainant has requested information from Merseyside Police about the false social media personas register. The Police refused to disclose the information under sections 31(1)(a) and 31(1)(b) of FOIA.
2. The Commissioner's decision is that Merseyside Police were entitled to rely on section 31(1)(a) and 31(1)(b) of FOIA. He also finds that the Police failed to respond to the complainant's information request within the statutory timeframe of 20 working days. On this basis the Commissioner finds that the Police has breached section 10 of FOIA.
3. He does not require further steps to be taken.

Request and response

4. On 10 February 2023, the complainant wrote to the Police and requested information in the following terms:

"Please accept the following request under the Freedom of Information Act.

ACPO guidance on Online Research and Investigation states: "The creation of a false [social media] persona should be agreed by a Detective Inspector (Intelligence or Covert Policing) or equivalent. Each agency should maintain a register of all such profiles created and used in the force/agency. This register should be maintained centrally and periodically reviewed taking into account the necessity and proportionality of maintaining and using each registered persona. A log, recording the time, date, user and the policing purpose, should be maintained for each use of a false persona."

I'm seeking:

1. The number of authorisations granted for the creation of false social media personas by Merseyside Police officers in each calendar year from 2018 to 2022 (inclusive).
 2. A list of column headings contained in the Merseyside Police false social media persona register and, if applicable, row headings.
 3. A list of options for entering data under each specific column heading and/or row heading in the Merseyside Police social media persona register.
 4. The number of entries in the Merseyside Police social media persona register, broken down by platform (including but not necessarily limited to Facebook, YouTube, WhatsApp, Twitter, Instagram, TikTok, Snapchat, Telegram, Pinterest, Reddit, LinkedIn, Tinder, Bumble, and Hinge.)
 5. A list of column headings contained in the Merseyside Police log recording the use of false social media personas and, if applicable, row headings.
 6. A list of options for entering data under each specific column heading and/or row heading in the Merseyside Police log recording the use of false social media personas.
 7. The number of entries in the Merseyside Police log recording the use of false social media personas, broken down by platform (including but not necessarily limited to Facebook, YouTube, WhatsApp, Twitter, Instagram, TikTok, Snapchat, Telegram, Pinterest, Reddit, LinkedIn, Tinder, Bumble, and Hinge.)"
5. Merseyside Police responded on 26 April 2023 and refused to provide the requested information citing section 31(1)(a) and 31(1)(b) of FOIA.

Following an internal review, Merseyside Police maintained its original position.

Reasons for decision

6. Section 31 of FOIA states that:

31.— (1) 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,

(b) the apprehension or prosecution of offenders...

7. Merseyside Police have argued that the disclosure of the information would pose a significant risk to ongoing criminal investigations. It says that disclosing the information could potentially impede the progress of investigations, hinder the apprehension of offenders, and compromise the overall administration of justice. It argues that disclosure would have an adverse effect on its tactical investigative and intelligence gathering capability when carrying out social media covert operations.

8. In its submissions to the Commissioner, Merseyside Police stated that to disclose the number of authorisations granted for approval to create social media pages, used as an investigative tool, would reveal policing activity. In its view, the disclosure of column headings, row headings and a list of options, can provide stricter searching criteria for advanced data searching, sometimes referred to as 'Google Dorking'; when search engines can be focused on exact column headers within .csv files. It says, this will indicate what platforms are being targeted especially when these are yes or no options.

9. Merseyside Police argue that to disclose the total number of entries on the social media persona register, broken down by social media platform, would show the number of personas that existed on a given platform and make it easier for offenders to avoid apprehension. It also argues that the disclosure of entries on the Police log recording, would undermine the effective delivery of operational law enforcement. It states that if specific tactical capabilities were disclosed, showing how regularly personas access a given platform, this would make it easier for offenders to avoid apprehension.

10. Merseyside Police have argued that modern-day policing is intelligence led. It says the public expects police forces to use all powers and tactics available to them to prevent and detect crime or disorder and maintain

public safety. It says by revealing tactical detail, would cause serious harm to any investigations and intelligence gathering exercises which may have focussed on the use of social media as law enforcement tool.

11. In their submissions, Merseyside Police argue that the disclosure of generic information relating to the use of false social media personas would pose a risk to the personal safety of individuals. It admits that it is publicly known that the police service uses social media as an investigative tool. However, it says that disclosing statistical data relating to social media accounts used for investigative purposes would provide an awareness to offenders and may alert them of such activity enabling them to close down their social media accounts to avoid apprehension, and potentially recreate other social media profiles via the dark web which would enable their offending to continue, placing the safety of their victims at risk.
12. In determining whether the exemption is engaged, the Commissioner has considered both the arguments presented by Merseyside Police together with arguments submitted by the complainant in their internal review request and in their complaint to the Commissioner.
13. The Commissioner agrees that the release of the information into the public domain would prejudice law enforcement activities. He considers that the disclosure of such information would provide details that will be useful to those with criminal intent and prejudice the law enforcement activities of Merseyside Police as well as the safety of victims. The Commissioner can see how the disclosure of such information would prevent the detection of crime and the apprehension of offenders. Having considered all the circumstances in this case, the Commissioner has decided that sections 31(1)(a) and 31(1)(b) are engaged. He has therefore gone on to consider the public interest arguments.

Public interest test

14. The Commissioner has considered the public interest arguments raised in the complainant's internal review request.
15. Merseyside Police recognises that there is public interest in transparency and the promotion of public trust. Merseyside Police say that it does not believe it is in the interest of the public to know which law enforcement agencies are using false social media personas to gather intelligence. It argues that to release the extent to which the tactic is deployed would provide an awareness to offenders and may alert them of such activity enabling them to close their social media accounts, avoid apprehension and potentially recreate other social media profiles via the dark web, which would enable their offending to continue and place the safety of their victims at further risk.

16. It argues that when its current or future law enforcement role is compromised by the disclosure of information, the effectiveness of the force will be diminished. It also says, it is not in the public interest if tactical capability is disclosed. Merseyside Police argue that it would create the need for frontline policing resources to be taken away from other areas of policing in order to monitor the criminality of such offenders.
17. When balancing the public interest, Merseyside Police say it is necessary to consider the release of the requested information into the public domain. It contends that any disclosure under the FOIA provisions which does not provide a tangible benefit to the public but undermines the trust between the public and the police is not in the public interest.
18. It maintains that to disclose specific details of the number of communications data authorisations, specifically in regard to the creation of social media accounts for investigative use, to gather intelligence would undermine the delivery of operational law enforcement. It says that personal safety of individuals is of paramount importance to the police service and must be considered in respect of every disclosure made under the FOIA provisions. It argues that a release to the world of any disclosures which compromises individual health and safety is not in the public interest and would undermine its law enforcement responsibilities.
19. Having considered the arguments before him, the Commissioner is satisfied that there is greater, wider public interest in the Police being able to carry out its current and future covert law enforcement operations where social media is used to target criminals without the potential risk that such operations could be thwarted by the disclosure of information into the public domain. It must be noted that the Commissioner is in no way dismissive of the public interest in disclosing information for the purposes of transparency and accountability. However, in the circumstances, he considers that there is significant public interest in withholding the information, which outweighs that in disclosure.
20. Therefore, the Commissioner concludes that section 31(1)(a) and 31(1)(b) of FOIA is engaged and the public interest favours maintaining the exemption in the case.

Right of appeal

21. 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

22. 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.
23. 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

Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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