

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 May 2023

**Public Authority:** Hampshire Constabulary  
**Address:** Mottisfont Court, Tower Street  
Winchester  
SO23 8ZD

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to any police incidents at a named specific property. Hampshire Constabulary refused to confirm or deny whether any information was held, citing Sections 30(3) and 40(5)(a)(i) of the FOIA.
2. The Commissioner's decision is that Hampshire Constabulary were entitled to rely on Section 30(3) to neither confirm nor deny holding the requested information, and the public interest lies with maintaining the exemption.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 24 August 2022, the complainant wrote to Hampshire Constabulary and requested information in the following terms:  
  
"For the past 5 years, I ask to be provided information relating to incidents at [redacted] and its entrance bridge, in particular reports of accidents at the location, damage to the property:
  - Date of event
  - What occurred (brief circumstances/explanation)

- Police reference

I am aware of an incident 23/06/2022 involving the police and ask to be provided the reference for this, an incident associated with [redacted].

5. Hampshire Constabulary responded on 22 September 2022. It stated it could neither confirm nor deny if any information was held, citing Sections 30(3) (investigations and proceedings) and 40(5)(a)(i) (personal information) of the FOIA.
6. Hampshire Constabulary provided an internal review on 11 October 2022, in which it upheld its original decision.

## Reasons for decision

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7. The following analysis explains why the Commissioner has decided that the Police were correct to rely upon section 30(3) of FOIA to neither confirm nor deny (NCND) whether relevant information is held falling within the scope of the complainant's request.

8. Section 30(1) of FOIA provides that:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of -

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained

1. whether a person should be charged with an offence, or
2. whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct."

9. Section 30(2) of FOIA provides that:

'Information held by a public authority is exempt information if -

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to -

(iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment'

And

(b) it relates to the obtaining of information from confidential sources'.

10. Section 30(3) of FOIA provides that: "The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be exempt information by virtue of subsection (1) or (2)."
11. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information requested. The effect of section 30(3) is therefore that the public authority is not required to confirm or deny whether relevant information is held where the exemption in section 30(3) is applicable.
12. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
13. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
14. Given the nature of the information requested, the Commissioner is satisfied that if information falling within the scope of the complainant's request were held, it could fall within the scope of the exemption in section 30(1) FOIA.
15. The exemption is subject to the public interest test set out in section 2(1)(b) of FOIA. It can only be maintained if, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether or not the public authority holds relevant information.

### **Factors in favour of confirmation or denial**

16. Hampshire Constabulary acknowledged in their internal review that confirmation or denial would improve police accountability with respect to a particular location.
17. There is a public interest in the police being open to scrutiny about its activities.
18. The Commissioner considers confirmation or denial would also lead to a better informed general public, promote public trust in the police, and provide greater transparency in its activities.

### **Factors in favour of maintaining the exemption**

19. Hampshire Constabulary have stated that to confirm or deny whether information was held would be to reveal the focus of investigatory activity into the public domain, and potentially hinder the prevention or detection of a crime.
20. There is a strong public interest in allowing the police to carry out investigations without these being undermined by any ongoing operational information being disclosed.
21. Confirming information is held in relation to a request could enable individuals to identify if private individuals in residence at the property have been the subject of a police operation. This could harm any investigation or the subjects of it, and potentially amount to the disclosure of personal data.
22. Confirming or denying whether relevant information is held could disclose information which may allow individuals or groups to avoid discovery.

### **The Commissioner's view**

23. The Commissioner understands the complainant's personal interest in the requested information, however, it is important to reiterate that confirmation or denial under FOIA is confirmation or denial to the world at large, and not just a private communication between the public authority and the applicant.
24. He also recognises that there is a very strong public interest in protecting the investigative capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, the public interest in the Hampshire Constabulary being able to effectively conduct its function of carrying out criminal investigations.

25. The Commissioner is therefore satisfied that the public interest in Hampshire Constabulary neither confirming nor denying whether relevant information is held outweighs that in meeting the requirements of section 1(1)(a) of FOIA.
26. The Commissioner's decision is therefore that Hampshire Constabulary were correct to rely upon section 31(3) to withhold the information from disclosure in this case.
27. Consequently it is not necessary to consider section 40(5B)(ii).

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**