

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

### **Decision notice**

**Date:** 7 July 2023

**Public Authority:** Chief Constable of West Midlands Police

**Address:** Lloyds House  
Snow Hill Queensway  
Birmingham  
B4 6DG

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

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1. The complainant has requested information from West Midlands Police ("WMP") about the false social media personas register. WMP disclosed some of the information but refused to disclose the remaining information under sections 31(1)(a) and 31(1)(b) of FOIA.
2. The Commissioner's decision is that WMP was entitled to rely on section 31(1)(a) and 31(1)(b) of FOIA.
3. The Commissioner does not require further steps.

### **Request and response**

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

"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 West Midlands Police officers in each calendar year from 2018 to 2022 (inclusive).
  2. A list of column headings contained in the West Midlands 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 West Midlands Police social media persona register.
  4. The number of entries in the West Midlands 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 West Midlands 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 West Midlands Police log recording the use of false social media personas.
  7. The number of entries in the West Midlands 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. WMP responded on 23 March 2023. It confirmed that it held some relevant information but refused to disclose the information based on section 31(1)(a) and 31(1)(b) of FOIA.
  6. Following an internal review, WMP revised its position to disclose information pertaining to question 2 and 3 of the complainant's request. However, WMP maintained its position to withhold the remaining information under section 31(1)(a) and 31(1)(b) of FOIA.

## **Reasons for decision**

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7. 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...

8. WMP have argued that to disclose specific details of the number of communications data authorisations relating to the creation of social media accounts for investigative use and the gathering of intelligence would undermine the delivery of operational law enforcement.
9. WMP says that modern-day policing is intelligence led and 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 maintains that by revealing specific information within the complainant's request, could cause serious harm to any investigation and intelligence gathering exercise that focuses on the use of social media as a law enforcement tool. It says that this would compromise the prevention and detection of crime and the apprehension or prosecution of offenders.
10. WMP contend that, although it is publicly avowed that the police service use social media as an investigative tool, disclosing statistical data would provide an awareness to offenders and may alert them of such activity enabling them to close down their social media accounts, avoid apprehension and potentially recreate other social media profiles via the dark web, enabling their offending to continue and placing the safety of their victims at further risk.
11. WMP argues that the complainant's request seeks information which relates to the police's use and detail of covert tactics to investigate serious crimes. It says that placing such information into the public domain would be helpful to criminals and terrorists as they could use such information to alter their behaviour to limit intelligence, evidence acquisition, and avoid detection.
12. In determining whether the exemption is engaged, the Commissioner has considered the arguments presented by WMP, the complainant's arguments and the stance he has taken in previous decision notices.
13. The complainant does not believe that disclosing the requested information would undermine the smooth delivery of operational law enforcement. They do not believe that a summary of authorisations and entries in a register would reveal specific details about any ongoing or past investigations. The complainant has stated that their request does not seek detailed information about specific operations or tactics but rather, seeks the aggregate statistical data on the number of

authorisations in WMP's police log. The complainant has also argued that offenders who are aware of the police using social media as an investigative tool may change their behaviour to make them more visible to the police.

14. The Commissioner accepts that the potential prejudice described by WMP relates to the interests which the exemptions contained at section 31(1)(a) and 31(1)(b) of FOIA is designed to protect.
15. The Commissioner is also satisfied 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 carried out by WMP, 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.
16. 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**

17. Sections 31(1)(a) and (b) are qualified exemptions and are subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosure.
18. In their complaint to the Commissioner, the complainant stated that the public interest in knowing the extent to which the police use false social media personas for intelligence gathering is clear and lies in the need for transparency and accountability around intrusive surveillance practices. The complainant disputes WMP's position that 'the police are already transparent.' They contend that the public has a right to know the extent to which the tactic is being used in order to make informed decisions about the appropriateness and proportionality of the practice.
19. WMP recognises the public interest in openness and transparency in the police's use of social media as an investigative or intelligence gathering tool. However, it argues that the effectiveness of current and future covert operations where social media is used to target criminals could be compromised. WMP argues that if specific tactical capability is disclosed, making it easier for offenders to avoid apprehension, there would be a need for frontline policing to be taken away from other areas of policing in order to monitor the criminality of such offenders.

20. When balancing the public interest, WMP say that the disclosure of the information requested by the complainant would have an adverse effect on the tactical investigative or intelligence gathering capability of WMP in its covert social media operations. It argues that the complainant's request seeks specific detail in relation to the number of authorisations granted for the creation of social media personas and the number of entries on WMP's police log, recording the use of false social media personas and broken down by platform. It contends that disclosing such details would undermine operational law enforcement.
21. WMP acknowledges that while it is publicly known that the police service uses social media as an investigative tool, in the current case, there is an argument for disclosure, inasmuch as the public have a right to know that the police use social media as a tool. It contends that this must be balanced against the negative impact these disclosures can have. WMP states that this public interest is met through the Investigatory Powers Commissioner's publication of communications data authorisations as a whole.
22. WMP maintains that the police are already transparent, and the provision of specific detail about past and current use of this tactic does not have any tangible community benefit. It contends that the disclosure of such information would prejudice the force's ability to prevent and detect crime by undermining the intelligence gathering process which can be mapped across the country to reveal national capability. WMP maintains that the balance does not favour disclosure.
23. The Commissioner recognises that information relating false social media personas as a means of intelligence gathering by the Police is of particular interest to the complainant. He does not consider the complainant's request to be limited to statistical data but includes other detail on the false social media persona register held by WMP for example, the use of specific platforms. Alerting the public to the use of these named platforms could be used by those with ill-intent to harm policing operations.
24. He is satisfied that there is greater, wider public interest in WMP 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.
25. 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

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26. 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)

27. 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.
28. 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  
SK9 5AF**