

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2023

Public Authority: Chief Constable of West Mercia Police
Address: Hindlip Hall Police Headquarters
Hindlip Hall
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant has requested information from the Chief Constable of West Mercia Police (WMP) regarding the number of officers on duty for a specific date.
2. WMP refused to disclose the requested information, citing section 31(1)(a) of FOIA (the law enforcement exemption).
3. The Commissioner's decision is that WMP was entitled to rely on section 31(1)(a) to withhold the requested information.
4. The Commissioner does not require further steps.

Request and response

5. On 30 June 2023, the complainant wrote to WMP and requested information in the following terms:
"... please can you provide data for the following amended request:
 1. The total number of response officers on duty in West Mercia during the night shift of **May 8, 2023**.
 2. The total number of supporting officers (e.g. those in control rooms, custody suites and other facilities) on duty in West Mercia during the night shift of **May 8, 2023**."

6. WMP responded on 17 July 2023. It stated that the request was being refused under section 31(1)(a).
7. Following an internal review, WMP wrote to the complainant on 24 July 2023. It stated that it was upholding its original position.

Scope of the case

8. The complainant contacted the Commissioner on 24 July 2023 to complain about the way their request for information had been handled.
9. They disagree with WMP's refusal to provide the requested information.
10. They commented that other police forces have disclosed such information.
11. They emphasised that the request relates to police staffing for a single day only. They consider that they have requested "generalised data" that would show "merely how many officers were working a single shift".
12. The complainant said "there is a public interest in releasing such data, so that the police are openly accountable for officer staffing levels. The purpose of this request is to enable greater transparency around general police staffing levels".
13. The Commissioner considers that the scope of his investigation is to consider whether WMP was entitled to refuse the request of 30 June 2023 under section 31(1)(a).

Reasons for decision

Section 31(1)(a) – the prevention or detection of crime

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

"Information ... is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

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

15. The exemption, if engaged, is subject to the public interest test.
16. First the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by section 31(1)(a), namely the prevention or detection of crime. WMP has expressed concerns about

revealing officer numbers for specific shifts and dates and criminals using such information to further criminal activity, by targeting their efforts. Clearly this relates to the prevention or detection of crime.

17. He is satisfied that the harm is not trivial. Crime is a serious matter, and it is important that crime is prevented and detected.
18. He is satisfied that there is a causal link between disclosure and the harm, and disclosure 'would be likely to' cause the harm, as he explains below.
19. WMP's responses indicate that it is claiming the lower level of likelihood, namely that disclosure 'would be likely to' harm the interests in question. For example, it used words like "could", when discussing the link between disclosure and harm. This means there must be a real and significant risk of the harm occurring, even if the risk is less than 50%.
20. As the Commissioner's section 31 guidance¹ explains, when considering the prejudice test, account should be taken of any 'mosaic effect'.
21. The prejudice test is not limited to the harm that could be caused by the requested information on its own. Public authorities can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture.
22. Complying with one request can make it more difficult to refuse requests for similar information in the future. Public authorities are therefore entitled to consider any harm that could be caused by combining the requested information with the information a public authority could subsequently be required to provide, if the current request was complied with.
23. Such points are clearly relevant to this case, concerning a request for the number of officers on duty during a specified night shift.
24. Whilst the complainant has argued that their request relates to a single shift only, the Commissioner would point out that other similar requests for different shifts or locations, if successful, would likely enable a wider picture to be built.
25. WMP alluded to the mosaic effect, when it told the complainant that:

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/>

"... releasing the number of the response and support officers at any one time will allow for comparisons to be made should additional data be requested ... disclosure of this data may in turn encourage individuals to make requests for alternative days / times, allowing for historical mapping of police numbers and providing an estimation to the mean number of officers required to police the force area at any one time ...".

26. The Commissioner is aware that the complainant has made the same (or a very similar) request to a number of different police forces.
27. The Commissioner also notes that the shift that is the focus of this particular series of requests from the complainant is the night shift of 8 May 2023, the bank holiday for the coronation of King Charles III.
28. The Commissioner would remind the complainant that disclosure under FOIA is 'to the world', and not just to the complainant themselves.
29. The Commissioner considers that there is a real and significant risk of disclosure causing the envisaged harm. It is not difficult to imagine criminals using information about the number of police officers on duty at different times or locations to plan their criminal activities, and evade detection.
30. Having considered the circumstances of this case, the Commissioner has decided that section 31(1)(a) is engaged.
31. He will now go on to consider the public interest test.

Public interest test

32. As noted at paragraph 12 above, the complainant argued that the public interest favours disclosure of the requested information, as it would enhance accountability and transparency around police staffing levels.

33. WMP acknowledged that:

"Disclosure may lead to better awareness and add value to the accuracy of public debate with regard to resources allocated for the prevention and detection of crime. Releasing officer deployment data for specific dates would make [WMP] openly accountable for officer staffing levels, proving police deploy their resources in the most suitable manner with the numbers available. Additionally, providing the public with details of how we spend public funds and use our resources show that [WMP] on these dates has utilised their biggest resource, officers, efficiently. This would assist public debate".

34. However against disclosure, WMP emphasised that disclosure could provide criminals with information about the numbers and spread of officers and enable comparisons to be made, especially if further requests are made regarding other dates and times. It said more crime could be committed and criminals could elude justice, if they are able to 'map' officer deployment.
35. WMP concluded that the public interest favours maintaining the exemption.
36. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test.
37. Whilst the complainant argued that there is a public interest in accountability and transparency around police staffing levels, the Commissioner notes that there is already some official information publicly available on www.gov.uk regarding police workforce numbers².
38. He considers that those statistics already go some way to satisfying any public interest there may be in disclosure of the information requested by the complainant under FOIA, and transparency around police staffing.
39. As noted above, the complainant said that other police forces have disclosed such information. Even if that is so, it does not automatically follow that all police forces should disclose it.
40. The Commissioner highlights that there is a very strong public interest in protecting the ability of public authorities to enforce the law.
41. The Commissioner considers that on balance, the factors against disclosure have greater weight. Consequently, he finds that the balance of the public interest favours maintaining the exemption.

² <https://www.gov.uk/government/collections/police-workforce-england-and-wales>

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Daniel Kennedy
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