

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

### **Decision notice**

**Date:** 23 October 2023

**Public Authority:** Chief Constable of Leicestershire Police  
**Address:** Police HQ  
St Johns  
Leicester  
LE19 2BX

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

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1. The complainant has requested, from Leicestershire Police, information about the number of response and support officers on duty during a specified night shift (8 May 2023).
2. Leicestershire Police refused to disclose the requested information, citing section 31 of FOIA (the law enforcement exemption).
3. The Commissioner's decision is that Leicestershire Police was correct to rely on section 31 of FOIA and refuse disclosure.
4. The Commissioner does not require any further steps as a result of this decision notice.

#### **Request and response**

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5. In correspondence dated 30 June 2023, the complainant wrote to Leicestershire Police and requested information in the below terms. The request was an amended version of an earlier, wider request:

"... please can you provide data for the following amended request:

1. The total number of response officers on duty in Leicestershire 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 Leicestershire during the night shift of **May 8, 2023**".
6. Leicestershire Police responded on 9 August 2023, saying it had received the request on 3 July 2023. It confirmed holding relevant information but refused disclosure, citing section 31 of FOIA.
7. Following an internal review, on 15 September 2023 Leicestershire Police upheld its original decision.
8. Leicestershire Police did not state which specific part of section 31 it was relying on, however it did express concern that criminals could use the withheld information to "evade capture". Therefore the Commissioner's understanding is that Leicestershire Police is relying on sections 31(1)(a) or (b) of FOIA, or both.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 16 September 2023 to complain about the way their amended request for information dated 30 June 2023 had been handled.
10. They disagree with Leicestershire Police's refusal to provide the requested information.
11. They commented that other police forces have disclosed such information.
12. 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".
13. 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".
14. The Commissioner considers that the scope of his investigation is to consider whether Leicestershire Police was entitled to rely on section 31 of FOIA to refuse the request dated 30 June 2023.

15. The Commissioner has not asked Leicestershire Police for any submissions or a copy of the withheld information. He considers that in this instance he is able to make his decision without those things.

## Reasons for decision

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16. Sections 31(1)(a) and (b) of FOIA respectively provide that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime, or the apprehension or prosecution of offenders.
17. The exemptions, if engaged, are subject to the public interest test.
18. First the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by sections 31(1)(a) and (b), stated at paragraph 16 above. Leicestershire Police is concerned about revealing police resources at specified times, thereby giving criminals a "tactical advantage" over the police and helping them to "evade capture". Clearly this relates to the prevention or detection of crime, or the apprehension of offenders.
19. He is satisfied that the harm is not trivial. Crime is a serious matter, and Leicestershire Police alluded to criminal activity risking the safety of the community. It is important that crime is detected and that offenders are apprehended.
20. 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.
21. Leicestershire Police said both "would be likely to" and "would", when discussing the link between disclosure and harm. Given this ambiguity, the Commissioner has considered the lower level of likelihood, namely that disclosure 'would be likely to' harm the interests in question. This means there must be a real and significant risk of the harm occurring, even if the risk is less than 50%.
22. As the Commissioner's section 31 guidance<sup>1</sup> explains, when considering the prejudice test, account should be taken of any 'mosaic effect'.

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

23. 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.
24. 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.
25. Such points are clearly relevant to this case, concerning a request for the number of officers on duty during a specified night shift.
26. 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. Leicestershire Police has already explained this to the complainant:

“I acknowledge that you are asking for a snapshot view only, but ... to disclose once will express a willingness to respond to further requests and consideration must be given as to how disclosure of these figures once put together could be used to paint a broader picture of operational resources, which could then be used by those likely to commit crime to gain a tactical advantage ... and evade capture”.
27. The Commissioner is aware that the complainant has made the same (or a very similar) request to a number of different police forces.
28. 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.
29. The Commissioner would remind the complainant that disclosure under FOIA is ‘to the world’, and not just to the complainant themselves.
30. The Commissioner considers that there is a real and significant risk of disclosure causing harm to the prevention or detection of crime and the apprehension or prosecution of offenders. 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 apprehension, or try to.
31. The Commissioner therefore considers that the exemptions are engaged.

**Public interest test**

32. As noted at paragraph 13 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. Leicestershire Police acknowledged considerations in favour of disclosure, such as accountability, transparency and enabling the public to see how public money is spent.
34. However against disclosure, Leicestershire Police emphasised the negative impact of disclosure on its law enforcement capabilities.
35. It concluded that the public interest favours withholding the information.
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](http://www.gov.uk) regarding police workforce numbers<sup>2</sup>.
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 and the public interest lies in maintaining the exemptions.

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

## Right of appeal

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**