

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2023

Public Authority: Chief Constable of South Wales Police
Address: Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU

Decision (including any steps ordered)

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

Request and response

5. The complainant wrote to SWP and requested information in the below terms. The request was apparently submitted online, and the complainant did not provide the Commissioner with a copy of it, however the request was quoted in the response that SWP provided:

"1. The total number of response officers on duty in South Wales 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 South Wales during the night shift of May 8, 2023".

6. SWP responded on 15 August 2023. It confirmed holding relevant information but refused disclosure, citing section 31(1)(a) of FOIA.
7. The response also referenced "the apprehension or prosecution of offenders", suggesting that SWP was also relying on section 31(1)(b).
8. However, in its internal review of 21 September 2023, SWP upheld its refusal and only mentioned section 31(1)(a).

Scope of the case

9. The complainant contacted the Commissioner on 4 October 2023 to complain about the way the above request had been handled.
10. They disagree with SWP'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 Commissioner considers that the scope of his investigation is to consider whether SWP was entitled to rely on section 31(1)(a) of FOIA to refuse the above request.
14. The Commissioner has not asked SWP 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

15. Section 31(1)(a) of FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
16. The exemption, if engaged, is subject to the public interest test.

17. First the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by section 31(1)(a), stated at paragraph 15 above. SWP has expressed concerns about revealing numbers of officers on duty at specific times and criminals using such information to further criminal activity, for example by targeting their efforts. Clearly this relates to the prevention or detection of crime.
18. He is satisfied that the harm is not trivial. Crime is a serious matter, and SWP emphasised that crime risks public safety. It is important that crime is prevented or detected.
19. 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.
20. SWP's response was ambiguous regarding the level of likelihood being claimed. For example it said "could" as well as "would", when discussing the link between disclosure and harm. It even said disclosure "would or would be likely to prejudice ...". 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%.
21. As the Commissioner's section 31 guidance¹ explains, when considering the prejudice test, account should be taken of any 'mosaic effect'.
22. 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.
23. 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.
24. Such points are clearly relevant to this case, concerning a request for the number of officers on duty during a specified night shift.

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

25. 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.
26. The Commissioner considers that SWP was likely alluding to the mosaic effect when it referred to concerns about disclosing the numbers of officers or staff on duty "at specific times" (plural). It also commented "[t]his information could provide intelligence to criminals as to when [SWP] may be perceived as being more able/less able to deal with any emergencies that arise ...".
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 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.
31. The Commissioner therefore considers that the exemption is engaged.

Public interest test

32. SWP acknowledged factors in favour of disclosure, such as openness, transparency and public awareness.
33. However against disclosure, SWP emphasised that "[t]he security of the public is of paramount importance", and that disclosure "could compromise law enforcement". It is concerned about "more crime being committed".
34. It concluded that the public interest favours withholding the information.
35. 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.

36. The complainant has not, in their complaint about SWP, put forward any specific public interest arguments regarding the issue or information that their request relates to.
37. 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 and the public interest lies in 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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