

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2023

Public Authority: Chief Constable of Norfolk Constabulary
Address: Police Headquarters
Falconers Chase
Wymondham
Norfolk
NR18 0WW

Decision (including any steps ordered)

1. The complainant has requested, from Norfolk Constabulary, information about the number of response and support officers on duty during a specified night shift (8 May 2023).
2. Norfolk Constabulary refused to disclose the requested information, citing sections 31(1)(a) and (b) of FOIA (the law enforcement exemption).
3. The Commissioner's decision is that Norfolk Constabulary was correct to rely on sections 31(1)(a) and (b) 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. On 1 July 2023, the complainant made the below request. It was addressed to Norfolk Constabulary and another public authority, Suffolk

Constabulary. The request was an amended version of an earlier, wider request:

"... please can you provide me with the following data:

1. The total number of response officers on duty in Suffolk 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 Suffolk during the night shift of **May 8, 2023**.
3. The total number of response officers on duty in Norfolk during the night shift of **May 8, 2023**.
4. The total number of supporting officers (e.g. those in control rooms, custody suites and other facilities) on duty in Norfolk during the night shift of **May 8, 2023**".
6. Norfolk Constabulary responded jointly with Suffolk Constabulary, apparently on 31 July 2023. It confirmed holding relevant information but refused disclosure, citing sections 31(1)(a) and (b) of FOIA.
7. Following internal review, Norfolk Constabulary again responded jointly with Suffolk Constabulary. It upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 4 October 2023 to complain about the way their amended request for information of 1 July 2023 had been handled.
9. They disagree with Norfolk Constabulary'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 Commissioner considers that the scope of his investigation is to consider whether Norfolk Constabulary was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse the 1 July 2023 request.

13. The Commissioner has not asked Norfolk Constabulary 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

14. 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.
15. The exemptions, if engaged, are subject to the public interest test.
16. 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 14 above. Norfolk Constabulary expressed concerns about the requested information allowing criminals to calculate the best time to commit crime in order to avoid detection. Clearly this relates to the prevention or detection of crime, or the apprehension of offenders.
17. He is satisfied that the harm is not trivial. Crime is a serious matter, and Norfolk Constabulary noted the implications for public safety. It is important that crime is detected and that offenders are apprehended.
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. Norfolk Constabulary has used words like "could" and "likely", as well as "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%.
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

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

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. Norfolk Constabulary alluded to the mosaic effect, when it explained that disclosing the requested information "will allow for comparisons to be made should additional data be requested", and that "disclosure of this data may in turn encourage individuals to make requests for alternative days / times ...".
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 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.
30. The Commissioner therefore considers that the exemptions are engaged.

Public interest test

31. Norfolk Constabulary acknowledged considerations in favour of disclosure, such as accountability, transparency and informing the public as to how funds are allocated.

32. However against disclosure, Norfolk Constabulary emphasised the importance of maintaining its law enforcement capabilities and public safety.
33. It concluded that the public interest favours withholding the information.
34. 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.
35. The complainant has not, in their complaint about Norfolk Constabulary, put forward any specific public interest arguments regarding the issue or information that their request relates to.
36. The Commissioner notes that there is already some official information publicly available on www.gov.uk regarding police workforce numbers².
37. 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.
38. 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.
39. The Commissioner highlights that there is a very strong public interest in protecting the ability of public authorities to enforce the law.
40. The Commissioner considers that on balance, the factors against disclosure have greater weight and the public interest lies in maintaining the exemptions.

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

Right of appeal

41. 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

42. 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.
43. 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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