

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 November 2023

Public Authority: Chief Constable of Kent Police
Address: Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant requested incident command logs relating to the 'Just Stop Oil' and 'Insulate Britain' climate protests, from Kent Police. Kent Police disclosed three documents, with redactions made under sections 24(1) (National security), 31(1)(a) and (b) (Law enforcement) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that Kent Police was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse to disclose the withheld information.
3. The Commissioner requires no steps as a result of this decision.

Background

4. The complainant has requested the same information from the Metropolitan Police Service¹ (MPS), and Hertfordshire Constabulary².

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027001/ic-230070-b8n2.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026149/ic-237689-g4y0.pdf>

Request and response

5. On 2 February 2023, the complainant wrote to Kent Police and requested information in the following terms:

“I’m seeking:

 - All emails and/or WhatsApp messages exchanged between Kent Police chief constable Alan Pughsley, or chief superintendent Simon Thompson, and home secretary Suella Braverman between 6-11 November 2022.
 - All emails and/or WhatsApp messages exchanged between Kent Police chief constable Alan Pughsley, or chief superintendent Simon Thompson, and home secretary Priti Patel between 13-23 September 2021.
 - Copies of any Public Order Incident Command Logs completed in relation to the Just Stop Oil protests in November 2022.
 - Copies of any Public Order Incident Command Logs completed in relation to the Insulate Britain protests in September 2021.”
6. Kent Police responded on 2 March 2023. It said it held no information in respect of the first two bullet points of the request. For the latter two bullet points, regarding incident command logs, it attached three appendices, with some redactions made under sections 24(1), 31(1)(a) and (b) and 40(2) of FOIA.
7. The complainant requested an internal review on 3 March 2023. He said the dates of the disclosed information did not match the dates specified in his request. He also asked Kent Police to reconsider the amount of information that had been redacted under sections 24 and 31, as he felt the redactions were excessive.
8. Kent Police responded on 24 April 2023. It said it had provided the wrong documents for September 2021 and it provided the correct information, namely appendices (1) and (3). It confirmed that the one remaining document originally disclosed, appendix (2), was correctly scoped in. It explained that it was created in April 2022, in preparation for expected protests throughout the year, with information about the policing of the November protests documented from page 34 onwards.
9. It maintained that the exemptions had been correctly applied to all the information, albeit it disclosed a fresh version of appendix (2), with fewer redactions made.

Scope of the case

10. The complainant contacted the Commissioner on 2 August 2023 to complain about the way his request for information had been handled. He did not dispute that sections 24 and 31 were engaged, but said:

“Kent Police has released the documents I requested but has redacted large sections. I believe the extent of these redactions indicate the authority has failed to follow the ICO’s guidance to provide as much meaningful information as possible.”

11. He also believed that Kent Police had failed to properly take account of the public interest in disclosing information about the policing of climate protests.
12. He did not complain about the application of section 40 to withhold personal information, or about Kent Police’s ‘not held’ response regarding emails and WhatsApp messages, either in his internal review request or his complaint to the Commissioner. These elements of Kent Police’s response have, therefore, not been considered by the Commissioner.
13. The analysis below considers Kent Police’s citing of sections 24 and 31 of FOIA to withhold information.
14. The Commissioner has viewed the withheld information.

Reasons for decision

Section 31 – Law enforcement

15. Section 31 of FOIA allows a public authority to withhold information which, if disclosed, could harm its own, or another public authority’s, ability to enforce the law.
16. Sections 31(1)(a) and (b) of FOIA apply where disclosure would, or would be likely to, prejudice:
- (a) the prevention or detection of crime; and
 - (b) the apprehension or prosecution of offenders.
17. In order for the exemption to apply, it must be the case that if the withheld information was disclosed, it would, or would be likely to, cause prejudice (ie harm) to the matters referred to in subsections (a) and (b). Three criteria must be met:

- the prejudice which Kent Police envisages as a result of disclosure, must relate to the prevention or detection of crime and the apprehension or prosecution of offenders;
 - there must be a causal relationship between disclosure and prejudice to those matters. This prejudice must be real, actual or of substance; and
 - Kent Police must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.
18. Kent Police applied sections 31(1)(a) and (b) to all of the withheld information. It told the Commissioner that disclosure would undermine its core law enforcement duties (ie protection of the public by preventing or detecting crime, and apprehending or prosecuting offenders).
19. It explained that the redactions were made to conceal sensitive operational and intelligence information:

"Disclosure of any intelligence risks identification of intelligence gathering methods. This is especially true where other forces have received similar requests and enables inferential mosaic effect detection of which forces were aware of what intelligence at specific times.

The maintenance of custody suites is key to maintaining the safety of detainees in line with the requirements of Police and Criminal Evidence Act 1984 (PACE). Disclosure of the management of arrestees as a result of custody maintenance could risk exploitation by Organised Crime Groups (OCGs), or other malicious actors, who would make use of their own intelligence gathering to identify opportunities to intervene in the conveyance of detainees to substitute locations.

In terms of planning and intervention, the disclosure of tactics would undermine future policing tactics by alerting malicious actors to the types of tactics used, timings of tactics, and the options for frustrating police attempts to manage and de-escalate criminal activities.

The policy logs outline deployments/Situation reports/Key Events and other pertinent issues. Correlation of decisions taken and the actions of protestors could allow malicious actors to identify the likely behaviour of the force. It also enables understanding of what resources are brought to bear when certain actions are taken. This would undermine Kent Police's ability to police any incident. There is also information relating to mutual aid given, or refused which

highlights vulnerabilities in respect of forces working together which would be invaluable to anyone with malicious intent. This also applies to mention of incidents occurring in other forces, which demonstrates the level of coordination between forces.”

20. Kent Police argued that disclosure would interfere with and undermine its policing of climate protests. It would also reveal intelligence which would be useful to anyone looking to disrupt or manipulate police management of such protests. Kent Police explained that this information could be used to disrupt policing responses locally, and elsewhere, when compared with the responses by other forces to similar requests. This would seriously compromise the police's ability to carry out its law enforcement duties effectively.
21. The Commissioner is satisfied that the harm Kent Police envisages clearly relates to the prevention or detection of crime and the apprehension or prosecution of offenders.
22. As regards a causal relationship between disclosure and prejudice to the above matters, having viewed the withheld information, the Commissioner is satisfied that its disclosure would allow interested parties to build up a detailed picture of Kent Police's law enforcement practices, capabilities and tactics, and its overall strategies for managing climate protests. Knowledge of how particular resources are deployed could be used to exploit perceived weaknesses, so as to frustrate the policing of future protests. The information would also reveal intelligence about protestors' strategies and intentions - this would be of considerable value to interested parties wanting to check what Kent Police does (and does not) know about them.
23. In view of the detail and breadth of the withheld information, the Commissioner has no difficulty accepting that the higher level of prejudice (ie that disclosure 'would' prejudice the matters protected by sections 31(1)(a) and (b) of FOIA) applies. He 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 that people intent on causing significant disruption or committing public order offences, by way of protest, would use detailed, confidential operational and intelligence information, to plan incidents and to evade apprehension (or to try to).
24. As to the extent of the redactions made, the Commissioner notes the complainant's belief that they are excessive for the purpose of protecting law enforcement matters. However, the complainant has come to that view without sight of the information in question. Having viewed all of the redactions, the Commissioner is satisfied that each

redaction comprises information which clearly engages the exemptions at sections 31(1)(a) and (b) of FOIA.

25. As the three criteria set out in paragraph 17 are satisfied, the Commissioner has gone on to consider the public interest test.

Public interest test

26. Sections 31(1)(a) and (b) are qualified exemptions and are subject to the public interest test set out in section 2 of FOIA. The Commissioner has considered whether, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information. In doing so, he has borne in mind that the higher level of 'would' prejudice applies (ie that the harm envisaged would be more likely than not, to occur).

Public interest arguments in favour of disclosure

27. The complainant argued:

"However, in [conducting the public interest test] the authority appears not to have considered a series of factors that favour disclosure:

Beyond generic arguments in favour of transparency, there is currently a huge amount of public interest in climate protests and the policing response. The requested information would improve scrutiny and accountability in relation to the way Kent Police carries out its functions in this area.

At previous climate protests, it has been alleged³ that government ministers have sought to override the principle of the police's operational independence and exert influence on policing tactics. The requested information, unredacted, would either expose wrongdoing or reassure the public that the police's operational independence was maintained.

The requested information, if made public, could assist with the learning of lessons [sic] and dissemination of knowledge to improve future decision-making by public authorities.

As noted above, the policing of protest is an issue of huge public interest and debates are ongoing about how this should be conducted.

³ <https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-57441573>

The requested information would improve public understanding of this issue and the processes followed by the police.”

28. Kent Police said that the disclosure of the withheld information would contribute to openness and transparency, inform the public and provide assurances that Kent Police is suitably prepared to deal with any large-scale disruption to national infrastructure.

Public interest arguments in favour of maintaining the exemptions

29. Kent Police argued:

“Disclosure of this information into the public domain would undermine the policing response to any future incidents of a similar nature by providing useful information to those wishing to cause disruption across Kent. By knowing police intelligence and tactics for such incidents, along with resourcing, command and communication procedures it would allow for police actions to be countered, undermined and overwhelmed.

The security of the country is of paramount importance and the police service will not divulge information if to do so would place the safety of any individual at risk, undermine national security or law enforcement. Whilst there is public interest in transparency of policing operations and in this case providing assurance that the police service is appropriately and effectively engaging with the threat posed by serious disruption of Kent infrastructure, there is a very strong public interest in safeguarding both national security and the integrity of police investigations and operations with regard [sic] large scale disruption.

As much as there is public interest in knowing that police activity is appropriate and balanced in matters of national security this will only be overridden in exceptional circumstances. The completed command logs for these protest activities are high-profile sensitive documents of great intelligence value to those wishing to engage in disruptive acts or criminal activity, and in this instance it is found that the public interest lies in favour of non-disclosure of the redacted information.”

Public interest balancing test

30. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests protected by the relevant exemption. If the public interest in maintaining the exemption does not outweigh the public interest in disclosure, the information must be disclosed.

31. The Commissioner considers that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest. He also recognises the need for transparency and accountability on the part of public authorities which are tasked with enforcing the law, particularly with regard to people exercising their right to peaceful protest about a matter which is of significant public concern.
32. The Commissioner also considers there is a public interest in people being informed about how Kent Police responds to the particular tactics used by climate protesters, where protesters' actions result in threats to their own personal safety or to wider public order. He recognises the need for transparency regarding the logging of such incidents, in order to create clear audit trails to assist during post-incident learning reviews. He also accepts, with regard to the policing of protests, the strong public interest in knowing whether policing activity is efficient and productive, particularly in light of the significant disruption that some climate protests have involved.
33. However, in carrying out this exercise, appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that would compromise the police's ability to accomplish its core function of law enforcement. If police attempts to manage protests are overwhelmed, the resultant disorder could endanger protesters and the wider public.
34. The Commissioner considers that the disclosure of the information would reveal strategic intentions, tactical planning information, deployment plans and intelligence, in relation to public protests which often do not follow a 'traditional' template of marches or rallies. He is satisfied that this information has a considerable value to interested parties wishing to gain an advantage over the police: to understand how decisions are made about the allocation of resources so as to resist or disrupt police activity. The Commissioner does not suggest that the complainant intends to use the information in this way, but disclosure under FOIA to the applicant is effectively disclosure to 'the world at large', with no onward restrictions on how the information may be used.
35. The Commissioner considers there is a strong public interest in protecting the law enforcement capabilities of the police, and, therefore, that appropriate weight must be given to the public interest inherent in the exemptions. That is, the public interest in avoiding prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders.

36. The Commissioner notes that Kent Police has disclosed substantial parts of the three appendices (more information was disclosed than has been withheld). He considers that this information goes some way to satisfying the public interest in transparency.
37. As regards the complainant's belief that disclosure would reveal any pressure brought to bear by ministers, the Commissioner notes that the media report he cited referred specifically to alleged text messages and phone calls from the Home Secretary in 2021. Should records of those messages exist, they fall outside of the scope of this request. Furthermore, Kent Police has denied holding any WhatsApp messages and emails on the matter, and the complainant has not challenged this. The Commissioner therefore places little weight on this as a public interest argument in favour of disclosure of the incident command logs.
38. On balance, the Commissioner considers that the disclosure of information that would undoubtedly aid the strategies of interested parties seeking to resist and disrupt the policing of climate protests, is not justified by the benefit which would flow from the disclosure of the information. For this reason, the Commissioner accepts that the public interest favours maintaining the exemptions.
39. His decision is, therefore, that Kent Police was entitled to rely on sections 31(1)(a) and (b) of FOIA to withhold the redacted information.
40. In view of this decision, it has not been necessary to also consider Kent Police's application of section 24 of FOIA to withhold the same information.

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

Samantha Bracegirdle
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