

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

### **Decision notice**

**Date:** 16 January 2024

**Public Authority:** Chief Constable of Hertfordshire Constabulary  
**Address:** Police Headquarters  
Stanborough Road  
Welwyn Garden City  
AL8 6XF

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

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1. The complainant requested information relating to an independent review into Hertfordshire Constabulary's policing of an Extinction Rebellion protest.
2. Hertfordshire Constabulary refused to provide the requested information, citing sections 31(1)(a)(b) (law enforcement), 38(1)(a)(b) (health and safety) and 40(2) (personal information) of FOIA.
3. The Commissioner has investigated its application of section 31.
4. The Commissioner's decision is that Hertfordshire Constabulary was entitled to rely on sections 31(1)(a) and (b) of FOIA to withhold the requested information.
5. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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6. On 22 May 2023, the complainant wrote to Hertfordshire Constabulary (the Constabulary) and requested information in the following terms:

"Please accept this request under the Freedom of Information Act.

News reports, [such as this article in the Times], indicate Hertfordshire Constabulary commissioned an independent review into its policing of

an Extinction Rebellion protest at the Newsprinters site in Broxbourne on 4 September 2020.

Please provide a copy of this review.”

7. The Constabulary provided its substantive response on 19 June 2023. It cited section 21 (information accessible to applicant by other means) of FOIA to refuse the request.
8. Following an internal review, the Constabulary revised its position, confirming it was no longer relying on section 21. Instead, it cited sections 31(1)(a)(b) (law enforcement), 38(1)(a)(b) (health and safety) and 40(2) (personal information) of FOIA as its reasons for refusing the request.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 29 August 2023 to complain about the way their request for information had been handled. They consider that the Constabulary has failed to consider several factors in favour of disclosure.
10. They also told the Commissioner that they are happy for any information exempt under section 40(2) to be withheld. They consider that withholding such information would also address any concerns regarding information withheld by virtue of section 38.
11. During the course of the Commissioner’s investigation, the Constabulary confirmed its application of exemptions to the withheld information and confirmed that it considers that section 31 applies to the withheld information in its entirety.
12. It told the Commissioner that it had considered applying redactions to the requested document, but had concluded that the redactions would make the document unusable.
13. The analysis below considers the Constabulary’s application of section 31 of FOIA to the requested information.

### **Reasons for decision**

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#### **Section 31 law enforcement**

14. Section 31(1) of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
15. In this case, the Constabulary is relying on subsections (1)(a) and (b):
  - “(a) the prevention or detection of crime
  - (b) the apprehension or prosecution of offenders”.
16. Section 31 is a prejudice-based exemption. This means a public authority can only rely on it where disclosing the information (or confirming or denying that it holds the information) could cause harm. To demonstrate the harm, it must satisfy a prejudice test.
17. In this case, 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 to the matters referred to in subsections (a) and (b). Three criteria must be met:
  - the actual harm which the Constabulary envisages must relate to the applicable interests within the limbs of the exemptions it has cited;
  - there must be a causal relationship between disclosure and prejudice to those interests. This prejudice must be real, actual or of substance; and
  - the Constabulary 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. Accordingly, the Commissioner expects the Constabulary to answer the following three questions:
  - “Which law enforcement interest(s), protected by section 31, could be harmed by the disclosure?
  - Is the harm you have identified real, actual or of substance and is there a causal link between disclosure and that harm?
  - What is the likelihood of that harm actually occurring: would it occur, or is it only likely to occur?”.
19. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

## **The Constabulary’s position**

20. The Constabulary has relied on the same reasoning for the citing of both limbs of the exemption. The Commissioner recognises that there is an overlap within these limbs of section 31(1) so he has considered them jointly here.
21. In correspondence with the complainant, the Constabulary explained that independent reviews are conducted "to review the effectiveness of the policing of a particular operation with a view to capture progressive organisational learning and to identify possible recommendations for future implementation".
22. Describing the withheld information as "highly confidential", it told the complainant it contains "detailed information of the operation from relevant logs and further information given in discussion internally".
23. It described the withheld information as containing a wealth of information that, if disclosed:

"... would reveal information and intelligence, key risks and indicators, policing response, resourcing models, the tactics that the Officers were attempting to employ along with incident management techniques and back-office functions, all of which are vital to effective law enforcement".
24. In that respect, it explained to the complainant that disclosure under FOIA, in other words disclosure to the world at large:

"... would give individuals with intent the intelligence required to disrupt future police activity in response to protests".
25. In the same way, in its submission to the Commissioner, the Constabulary described the withheld report as information that includes law enforcement tactics as well as intelligence.
26. Regarding the harm arising from disclosure, it told the complainant:

"To disclose the review could cause harm to the Police service's ability to protect the public it serves and could prejudice its ability to perform core functions such as ensuring a safe environment for protesters to express their views peacefully and for Officers on-site to do their work....".
27. In its submission to the Commissioner, the Constabulary argued that releasing policing tactics would have a detrimental effect on its resources and capabilities.
28. With regard to the likelihood of prejudice, in correspondence with the complainant, the Constabulary variously used the terms "could cause harm", "could prejudice", "would" and "which is likely to undermine".

29. However, in its correspondence with the Commissioner, the Constabulary used language that was with respect to the consequences, as opposed to the possible consequences, of disclosure. For example it said that disclosure “would have some serious consequences”.

**Is the exemption engaged?**

30. The withheld information in this case is an independent review into the policing of a protest. The Constabulary has argued that disclosure would interfere with, and disrupt, police activity in response to protests and harm its ability to protect the public. These are clearly matters that relate to the prevention or detection of crime and the apprehension or prosecution of offenders.
31. 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 picture of law enforcement practices, capabilities and tactics. He is satisfied that this is information that would assist those planning to protest.
32. With respect to the prejudice test, the Commissioner considers that, if a public authority claims that prejudice would occur, they need to establish that either:
- the chain of events is so convincing that prejudice is clearly more likely than not to arise. This could be the case even if prejudice would occur on only one occasion or affect one person or situation; or
  - given the potential for prejudice to arise in certain circumstances, and the frequency with which such circumstances arise (ie the number of people, cases or situations in which the prejudice would occur) the likelihood of prejudice is more probable than not.
33. ‘Would be likely’ refers to a lower level of probability than ‘would’, but one which is still significant.
34. In this case, the Commissioner is satisfied that disclosure of the withheld information is capable of having a detrimental impact on law enforcement with respect to the prevention or detection of crime and the apprehension or prosecution of offenders.
35. Having considered the arguments put forward by the Constabulary, the Commissioner is satisfied that the lower level of ‘would be likely to occur’ is met in this case.
36. As the three criteria set out above are satisfied, the Commissioner considers that sections 31(1)(a) and (b) of FOIA are engaged.

## **Public interest test**

37. Section 31 is subject to the public interest test, as set out in section 2 of FOIA. This means that although section 31 is engaged, the information must be disclosed if the public interest in disclosing the information is equal to, or greater than, the public interest in protecting the matters referred to in subsections (a) and (b).

## **Public interest in disclosure**

38. In support of their complaint, the complainant argued that numerous media outlets had published allegations in relation to the review. The complainant argued that, in the circumstances, disclosure:

“.. would help to address legitimate public concerns by providing a full picture of the review, rather than the partial picture offered by media reports, and would either expose misconduct or correct inaccurate information that is currently in the public domain”.

39. They also considered that disclosure would assist with the learning of lessons, and dissemination of knowledge, to improve future decision-making among other police forces.

40. The Constabulary recognised the public interest in the public being made aware of how it reviews operations. It acknowledged that release of the requested information would demonstrate its commitment to openness and transparency. It also recognised that disclosure would:

“provide detail in the management of incidents at a local level during the policing of planned and spontaneous public events (such as protests) to ensure public safety is sustained and improved”.

## **Public interest in maintaining the exemption**

41. Arguing in favour of maintaining the exemption, the Constabulary told the complainant that it would not be in the public interest to disclose information that had the potential to compromise the effectiveness of current and future strategies when managing incidents.
42. It argued that, as well as being written from a post-operation perspective, the review also detailed recommendations for future implementation on any similar operation.
43. It argued that it was not in the public interest to place such intelligence into the public domain which could be exploited and lead to policing tactics being compromised. Nor would it be in the public interest to compromise police strategies and incident management techniques.

44. It also argued that it would not be in the public interest to reduce the efficiency and effectiveness of the force as a result of disclosing information that would disrupt law enforcement.

45. The Constabulary also told the complainant that disclosure in this case would set a precedent, arguing that:

“...in disclosing information to one applicant, we are expressing a willingness to provide it to anyone in the world. This means that a disclosure to a genuinely interested and concerned person automatically opens it up for a similar disclosure, including [to] those who would use the information to gain an advantage over the police”.

### **The balance of the public interest**

46. The Commissioner recognises the complainant’s belief that disclosure would provide a full picture of the review, rather than what they described as a partial picture offered by media reports. He also gives weight to the argument that disclosure could assist with the learning of lessons and dissemination of knowledge to improve future decision-making among other police forces.

47. The Commissioner also recognises the public interest in transparency. With regard to the policing of protests, he accepts the strong public interest in knowing whether policing activity is efficient and productive, particularly in light of the significant disruption that some protests involve.

48. However, in carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption. In this case he has considered the public interest in avoiding likely prejudice to law enforcement matters, specifically in avoiding prejudice to the prevention or detection of crime and the apprehension of prosecution of offenders.

49. Clearly, it is not in the public interest to disclose information that may compromise the Constabulary’s ability to accomplish its core function of law enforcement.

50. The Commissioner has had regard to the very strong public interest in ensuring that the disclosure of information does not materially impede the prevention and detection of crime or the apprehension or prosecution of offenders. He has also taken into account that 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.

51. On balance, the Commissioner is satisfied that, in the circumstances of this case, the public interest in maintaining the exemption outweighs that in disclosing the requested information.
52. His decision, therefore, is that the Constabulary was entitled to rely on sections 31(1)(a) and (b) to withhold the information.



## **Right of appeal**

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53. 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)

54. 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.

55. 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 .....**

**Carolyn Howes  
Senior Case Officer  
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