

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2024

Public Authority: Chief Constable of West Midlands Police
Address: Lloyd House
Colmore Circus
Queensway
Birmingham
B4 6DG

Decision (including any steps ordered)

1. The complainant requested information from West Midlands Police relating to fields on a database. West Midlands Police refused to provide the requested information, citing section 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that section 43(2) of FOIA applies and that the public interest favours maintaining the exemption.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. Further to a lengthy exchange of correspondence between the parties, on 22 April 2024 the complainant wrote to West Midlands Police and requested information in the following terms:

"I refer you to my request of 11/03/2024 [link redacted] I again ask to be provided : the fields the PSD [Professional Standards Department] database holds that can generate reports (aside of Case Received and Case Recorded dates)".

5. West Midlands Police ultimately logged this as a new request on 22 May 2024. It also sought clarification of the request, specifically the complainant's definition of 'fields' and which levels to perform a search at eg Department header level, heading level etc.
6. The complainant responded on 22 May 2024, providing the requested clarification.
7. West Midlands Police provided its substantive response on 20 June 2024, citing section 43(2)(commercial interests) of FOIA.
8. The complainant expressed dissatisfaction with that response on 21 June 2024. They told West Midlands Police:

"I have not asked for the database structure. [...] I am, as presented, asking to be provided the fields from the system which can provide reports. [...] The software will provide 'management information' data from various fields and I await these".
9. Following an internal review, West Midlands Police wrote to the complainant on 25 June 2024, maintaining its view that section 43 applies.

Scope of the case

10. The complainant contacted the Commissioner on 25 June 2024 to complain about the way their request for information had been handled.
11. The complainant considers that the information "is not sensitive in any respect" and disputes the application of section 43. They consider that West Midlands Police failed to show how the release of the requested information would be prejudicial to commercial activities, and of whom.
12. They also consider that the IOPC [Independent Office for Police Conduct] has disclosed information of the type they are requesting.
13. The request in this case refers to the PSD database. The Commissioner is mindful of the following explanation, provided by West Midlands Police to the complainant:

"The software platform used by our Professional Standards Department to record and manage complaints is 'Centurion (Professional Standards)' provided by FIS (Force Information Systems Limited). FIS is a private company which specialises in the provision of Professional Standards IT solutions".

14. The analysis below considers West Midlands Police's application of section 43 of FOIA to the requested information.

Reasons for decision

Section 43 commercial interests

15. Section 43(2) exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any legal person (an individual, a company, the public authority itself or any other legal entity).

The complainant's position

16. The complainant states categorically that they are not asking for the database structure. They consider that their request is simply for the fields from the system which can provide reports.

17. They told the Commissioner:

"I am seeking neither 'system details' nor design & build of the database, but fields held for the purpose of generating reports some/many of which can be gleaned from IOPC publications".

18. The complainant provided details of the information provided by the IOPC. In respect of that information, the complainant said:

"This request differs form [sic] that to the IOPC [which resulted in the above disclosure], in that I am seeking the fields WMP [West Midlands Police] hold and can send or provide information about, as opposed to what they send the IOPC – which is not necessarily reflected as above; some IOPC fields may result from their own analysis, calculation".

West Midlands Police's position

19. West Midlands Police told the complainant that the fields being requested "essentially amount to the database structure of Centurion", ie of the software platform it uses to record and manage complaints.
20. It argued that disclosure would give competitors information which would enable them to compete with the Centurion product. It argued that this, in turn, would prejudice the commercial interests of FIS, meaning that their ability to participate competitively in a commercial activity would be harmed.

21. It also considers that West Midlands Police's own commercial interests would be prejudiced, explaining that disclosure is likely to damage its relationship with the supplier, as well as reducing the number of companies bidding on tenders. It considers that this would reduce the opportunities for the force to purchase the best services, from the widest range of suppliers, at the best price.
22. In its submission to the Commissioner, West Midlands Police confirmed that it had sought the view of FIS, the third party provider. It provided details of the exchanges that had taken place between them.
23. West Midlands Police told the Commissioner that "there are a huge number of fields" within the system that is the subject of the request. Furthermore, they explained that any database field can be used to create a parameter for a report. Mindful of the wording of the request, they therefore consider that the request is asking for details of every field on the Centurion system.
24. With respect to the commercial interests of the third party concerned, West Midlands Police told the Commissioner:

"This information is not readily accessible to FIS's competitors and goes beyond the information about the database system which is available online. The information provides crucial insight into the design of the system and to place this information into the public domain would be likely to prejudice the commercial interests of FIS....".
25. In support of that view, it provided arguments in relation to several aspects, including impact on competitive advantage and intellectual property risks.
26. With respect to the complainant's view that similar information has been disclosed by IOPC, West Midlands Police explained:

"Although those particular fields from Centurion are made publicly available in these bulletins, these are necessary to comply with the reporting requirements of the IOPC and FIS are fully aware".
27. It described the information that is in the public domain as 'only a very small selection' of the fields that make up the Centurion system.
28. In its submission to the Commissioner, West Midlands Police also confirmed its view that disclosure would prejudice its own commercial interests. It argued that disclosure would deter other companies from offering West Midlands Police their products or services, or extending their contracts, if they believed that West Midlands Police "might

similarly release detail of their products or services into the public domain that could prejudice their own commercial interests”.

The Commissioner's position

29. In order for section 43(2), to be engaged, three criteria must be met:
 - the harm which the public authority envisages must relate to someone's commercial interests;
 - the public authority must be able to demonstrate a causal relationship between disclosure and prejudice to those commercial interests. The resultant prejudice must be real, actual or of substance; and
 - the level of likelihood of prejudice being relied upon by the public authority must be met (ie it must be shown that disclosure would, or would be likely to, result in prejudice occurring).
30. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by West Midlands Police relates to the interests which the exemption contained at section 43(2) is designed to protect.
31. The Commissioner has next considered the second and third criteria.
32. The Commissioner accepts that FIS has commercial interests in the withheld information, as it has invested time and money in the development and enhancement of the Centurion system.
33. The withheld information is not readily accessible to FIS's competitors, and goes beyond the information about the database system which is available online.
34. Having considered the arguments put forward by the third party, the Commissioner is satisfied that disclosure of the withheld information presents a real and genuine risk of harming their commercial interests.
35. The Commissioner also accepts that West Midlands Police's arguments, regarding harm to its ability to competitively negotiate best value for money and the undermining of its relationships with suppliers, relate to its own commercial interests.
36. On the basis of the above, the Commissioner therefore accepts that there is a real risk of prejudice occurring to both FIS' and West Midlands Police's commercial interests if the information were to be disclosed under FOIA.

37. As the three criteria set out above are met, the Commissioner is satisfied that the exemption provided by section 43(2) is engaged.

Public interest test

38. Section 43(2) is subject to the public interest test, as set out in section 2 of FOIA. This means that although the exemption is engaged, the requested information must be disclosed unless the public interest in maintaining the exemption is stronger than the public interest in disclosure.

Public interest arguments in favour of disclosure

39. West Midlands Police acknowledged the public interest in transparency, accountability, and public understanding of how public money is being used.

Public interest in maintaining the exemption

40. West Midlands Police acknowledged that companies that work with public authorities should be mindful of FOI legislation, and should expect that some information regarding that relationship may be disclosed into the public domain, for reasons of accountability.
41. However, it argued that it would not be in the public interest if disclosure led to a reduction in the choice of goods and services available, thus reducing West Midlands Police's ability to purchase the best available in terms of quality and cost effectiveness.
42. It also argued that releasing information under FOIA, which is provided by a business supplying important services to the Police service, would damage that relationship and there would be an impact on the effectiveness of the core function of the Police.

Balance of the public interest

43. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the information in question, or to withhold it, because of the interests protected by the relevant exemption.
44. In this case, the Commissioner recognises that the information is of interest to the complainant. However, he has also taken into account that disclosures of information under FOIA are, in effect to the world at large, and not just to the individual requester.

45. The Commissioner has had regard to the public interest in ensuring that disclosure under FOIA does not adversely impact the commercial interests of suppliers which do business with public authorities, without good reason. There is a public interest in ensuring that the commercial interests of suppliers are not damaged or undermined by the disclosure of information which is not in the public domain and which could adversely impact their future business.
46. There is also significant public interest in not prejudicing the commercial interests of West Midlands Police when securing best value for public money.
47. Having accepted in this case that disclosure would be damaging to West Midlands Police's own commercial interests, as well as to those of FIS, the Commissioner can see no stronger arguments for disclosure which are capable of justifying that potential for damage.
48. The Commissioner has considered the public interest arguments and accepts that disclosure would help to increase openness and transparency. However, given the nature of the commercial harm that would occur should the information be disclosed, the Commissioner finds that the balance of the public interest favours maintaining the exemption at section 43(2) of FOIA.
49. In conclusion, and taking into account the above considerations, the Commissioner has concluded that the public interest favours maintaining section 43(2). The Commissioner's decision is, therefore, that West Midlands Police was entitled to rely on section 43 of FOIA to withhold the requested information.

Right of appeal

50. 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

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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