

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 December 2024

Public Authority: Chief Constable of Warwickshire Police
Address: Police Headquarters
Leek Wootton
Warwickshire
CV35 7QB

Decision (including any steps ordered)

1. The complainant requested a specified protocol relating to Warwickshire Hunt. Warwickshire Police refused to provide the requested information citing section 32 of FOIA – the exemption for court records etc, and section 42 of FOIA – the exemption for legal professional privilege. The complainant challenged both the application of the FOIA exemptions and whether the request should instead have been considered under the EIR.
2. The Commissioner's decision is that FOIA is the correct statutory regime for this request for the reasons set out in this notice. He also finds that Warwickshire Police was entitled to rely on section 32(1)(b) of FOIA to refuse this request. As he has found section 32(1)(b) to be engaged, the Commissioner has not deemed it necessary to consider Warwickshire Police's additional reliance on section 42(1) of FOIA.
3. No steps are required as a result of this decision.

Background

4. The request set out below is for a specified protocol agreed between Warwickshire Police and the Warwickshire Hunt. The Commissioner has

previously issued decision notices¹ on this topic in which he upheld Warwickshire Police's reliance on section 32(1)(b) of FOIA in relation to the requested protocol.

5. Whilst previously issued decision notices are not legally binding, and the Commissioner will consider each complaint on its merits, the Commissioner has taken his previous findings into account in reaching his decision in the case under consideration here.
6. Warwickshire Police previously had a statement on its website, which has since been removed. The Commissioner is advised that this statement was as follows:

'A spokesperson for Warwickshire Police said:

"Earlier this year we took civil action following concerns raised by the community over road safety while hunt activity took place.

This came in the form of a Community Protection Notice ['CPN'], which we issued.

The CPN outlined several steps that Warwickshire Hunt must take to ensure that both they and any members of the public using the roads are safe.

This civil order concerned only safety around the roads. It had no bearing on the hunt's legal right to trail hunt.

Warwickshire Hunt exercised their right to appeal the CPN and this meant the CPN was suspended awaiting appeal. During this process we met with them to discuss a proposal for a different agreement.

During these discussions, the Hunt agreed to a protocol that will see the introduction of safety and monitoring measures that are far wider-reaching than anything the CPN originally stipulated.

Given that this is a civil matter, and Warwickshire Hunt have accepted and understood the community's concerns over road safety and are keen to work with all parties to manage this going forward, we have taken the decision to withdraw the CPN".'

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4030326/ic-270328-d0f8.pdf> **and** <https://ico.org.uk/media/action-weve-taken/decision-notices/2024/4030421/ic-296593-15r6.pdf>

7. In one of the earlier related cases cited above, Warwickshire Police also provided the following explanation to the Commissioner, which he has replicated here as it provides useful context:

“The decision to enter into the Protocol was a different decision to withdrawing the court proceedings; this is because the Court proceedings were not instigated by Warwickshire Police and therefore were not ours to withdraw. The position is, as was explained in our statement issued by the Force in August 2023 to which a link was provided in response to this question, –

- In December 2022 Warwickshire Police issued a Community Protection Notice (CPN) against Warwickshire Hunt which sought to address concerns raised in relation to road safety.
- Warwickshire Hunt lodged an appeal against the CPN through the courts. The effect of lodging the appeal was to suspend the CPN whilst the appeal was determined.
- The Protocol was explored as a resolution of those court proceedings and was entered into in order to settle and resolve those proceedings – it was, in effect, a settlement agreement.
- As a result of the Protocol being agreed, the Warwickshire Hunt withdrew their appeal and the Police withdrew the CPN.

Therefore, it is correct and consistent to advise that a Chief Officer signed the Protocol but that it was not our decision to withdraw the court proceedings – that decision was exercised by Warwickshire Hunt.”

Request and response

8. On 25 March 2023, the complainant wrote to Warwickshire Police and requested information in the following terms:

‘The OPCC [Office of the Police and Crime Commissioner] does not hold a copy of the Protocol agreed between Warwickshire Police and the Warwickshire Hunt in 2023 following the withdrawal of a Community Protection Notice. OPCC has stated that our request should be directed to Warwickshire Police. We accordingly request a copy of the Protocol under the Freedom of

Information Act 2000 and the Environmental Information Regulations 2004.

For the avoidance of doubt, we reiterate that we would also like this request to be considered under the Environmental Information Regulations 2004 ("EIRs 2004") on the basis that it is an agreement that affects (or is likely to affect) biodiversity and therefore falls within the definition of "environmental information" in regulation 2(1) EIRs 2004.'

9. Following various exchanges between the two parties in which Warwickshire Police confirmed it would be considering the request under FOIA, the substantive response was provided on 11 June 2024. Warwickshire Police refused to provide the requested protocol citing the exemptions in sections 32 (court records) and 42 (legal professional privilege) of FOIA.
10. The complainant requested an internal review on 11 June 2024.
11. Following its internal review, Warwickshire Police wrote to the complainant to provide the outcome on 3 July 2024. It maintained that sections 32 and 42 of FOIA applied.

Scope of the case

12. The complainant contacted the Commissioner on 2 August 2024 to complain about the way her request for information had been handled. The complainant is acting on behalf of the League Against Cruel Sports (LACS).
13. The grounds of complaint were twofold, namely:

"The first is the refusal to provide a copy of the Protocol under the EIRs 2004.

The second is that a copy of the Protocol is being withheld under s.32 (Court records) and s.42 (Legal Professional Privilege) FOIA 2000."
14. Unless a request contains a mix of parts that are for recorded information under FOIA and other parts which constitute environmental information under the EIR, the Commissioner must determine which single statutory regime applies. In this case, the complainant has asked for a specified protocol.

15. The Commissioner has considered whether Warwickshire Police handled this request under the correct statutory regime and whether it properly relied on sections 32(1)(b) and 42(1) of FOIA to refuse the request.

Reasons for decision

16. The Commissioner has first considered whether the request falls under FOIA or the EIR. The complainant submitted that the request "should also be considered" under the EIR:

"on the basis that it is an agreement that affects (or is likely to affect) biodiversity and therefore falls within the definition of "environmental information" in regulation 2(1) EIRs 2004".

17. The complainant did not explain how or why the requested protocol would affect biodiversity.

18. Warwickshire Police submitted that the two previously issued decision notices (at footnote 1) for the same protocol were considered under FOIA, and argued:

'...with respect we do not see how an agreement that relates purely to road safety concerns could be argued as falling within the definition of "environmental information" as defined under the EIR 2004. The assertion from [the complainant] that the agreement "affects or is likely to affect biodiversity...." is non-sensical when it relates purely to road safety issues. The fact that the initial CPN and the settlement agreement ("Protocol") related only to issues of road safety was made clear by the Force in its initial public statement on the matter ...'.

19. The statement referenced here is that set out under paragraph 6 of this notice.

20. In its submissions to the Commissioner, Warwickshire Police also argued that:

'The response from the FOI Supervisor was clear that technically the "protocol" could fall within Regulation 2(1)(c) as a "measure" however that definition is qualified as having to affect or be likely to affect elements and factors in (a) and (b) - when considering the factors in those subsections, it clearly did not apply to a settlement agreement relating to road safety.

Road safety concerns fulfil neither the requirements of Regulation 2(1)(a) [the state of the elements of the environment and the

interaction amongst those elements] nor 2 (1) (b) [factors such as substances, energy, noise, radiation or waste, including radioactive water, emissions, discharges and other releases into the environment affecting or likely to affect the elements of the environment....]

This was not a Protocol to address the use of the roads for example in the way of petrol/diesel vehicles as opposed to electric vehicles or similar; it was to address road safety in the form of crossing of the highway by large groups of horses and dogs etc. In our submission, there is no basis upon which such an agreement could be interpreted as falling within any definition under Regulation 2 of the EIR.'

21. Having considered the arguments provided, the Commissioner is satisfied that the request was properly considered under FOIA.
22. Warwickshire Police has applied both sections 32 and 42 of FOIA to the protocol in its entirety. He will next consider Warwickshire Police's reliance on section 32(1)(b) of FOIA.

Section 32 – Court records etc

23. Warwickshire Police has cited section 32(1)(b) of FOIA in respect of the requested protocol.
24. Section 32(1) of FOIA states that information is exempt from disclosure if it is held only by virtue of being contained in:

“(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter”.
25. Courts and inquiries are not subject to FOIA, so the public authorities most likely to use this exemption are those whose functions involve regular interaction with the courts system, or who are party to court, inquiry or arbitration proceedings.
26. Section 32 is an absolute exemption and is therefore not subject to any public interest considerations.
27. The Commissioner has published guidance² which sets out his interpretation of the section 32 of FOIA exemption.

² <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

28. The Commissioner understands that section 32 of FOIA was drafted to allow the courts to maintain judicial control over access to information about court proceedings. This includes giving courts control to decide what information can be disclosed without prejudicing those proceedings. In effect, section 32 ensures that FOIA cannot be used to circumvent existing court access and discovery regimes. In addition, public authorities are not obliged to disclose any information in connection with court, inquiry or arbitration proceedings outside of those proceedings.
29. In its refusal notice, Warwickshire Police advised the complainant that:

“In this case, the exemption is engaged as the details of the protocol exist only by virtue of being created to resolve litigation proceedings of which Warwickshire Police were a party.”
30. In explaining its position to the Commissioner, Warwickshire Police relied on its previous arguments submitted in respect of the earlier cases. It said:

“The Protocol is an agreement which was entered into by the Warwickshire Hunt and Warwickshire Police – being the 2 parties to ongoing appeal proceedings – for the purpose of resolving those proceedings in a way which provided a workable framework between the parties. As was made clear in the Force’s statement at the time, its requirements go further than the terms of the CPN. As a result of agreeing the Protocol, the court proceedings were settled through the appeal being withdrawn and the CPN also being withdrawn”.
31. As explained in the Commissioner’s guidance:

“Section 32 covers information held ‘only by virtue’ of being contained in documents that are created or held for the purposes of court, inquiry or arbitration proceedings.”
32. Having considered the arguments provided, and the associated legal correspondence, the Commissioner is satisfied that the protocol was originally created for the purposes of proceedings, and not acquired by any other route, therefore it is held ‘only by virtue’ of being for the purpose of proceedings in a particular cause or matter.
33. As the protocol engages the section 32(1)(b) exemption, it is exempt from disclosure under FOIA. Given that the Commissioner has determined that Warwickshire Police was entitled to rely on section 32(1)(b) of FOIA, he has not found it necessary to consider its reliance on section 42(1) of FOIA.

Right of appeal

34. 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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Carol Scott
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF