

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 December 2024

Public Authority: Chief Constable of West Mercia Police
Address: Police Headquarters
Hindlip Hall
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant has requested information regarding an alleged crime from West Mercia Police. West Mercia Police would initially neither confirm nor deny ("NCND") holding any information, citing section 40(5) (Personal information) of FOIA.
2. During the Commissioner's investigation, following liaison with the complainant, West Mercia Police revised its position. It located and disclosed some information, with redactions made under sections 30(1) (Investigations and proceedings) and 40(2) (Personal information) of FOIA. At a later stage, following further liaison with the complainant, West Mercia Police revised its position again and cited section 12(2) (Cost of compliance exceeds appropriate limit) of FOIA.
3. The Commissioner's decision is that West Mercia Police was correct to rely on section 30(1). He also finds that it was entitled to rely on the cost limit. No steps are required.

Request and response

4. On 12 February 2024, the complainant wrote to West Mercia Police and requested the following information:

"I am writing in relation to crime reference number: [redacted] which involved an investigation into the cage trapping and unlawful removal of wild Buzzards by two individuals near [location redacted], West Mercia (October 2021).

Given this case is now time barred there shouldn't be any difficulties in providing the following information:

- 1) When did this investigation close?
 - 2) Why did it close (as opposed to charges being laid)?
 - 3) Copies of all correspondence to and from West Mercia Police about this case from the multi-agency partners involved in the investigation, including the Crown Prosecution Service, National Wildlife Crime Unit, RSPB, PAW Raptor Priority Delivery Group Chair.
 - 4) Details of any action West Mercia Police has taken against PC [name redacted], the investigating officer, in relation to this case, and Sgt [name redacted].
 - 5) Any evidence you possess that either PC [name redacted] and Sgt [name redacted] have any connections with the game shooting community".
5. On 21 March 2024, West Mercia Police responded. It would NCND holding any information, citing section 40(5) of FOIA.
6. The complainant requested an internal review on 23 March 2024. She said:

"In relation to questions 1-3, personal information is not required to fulfil my information request. On question 3, any personal information included in the correspondence I have requested can simply be redacted. This is normal procedure.

In relation to questions 4-5, I accept that this falls under 'personal information' and that you therefore do not have to provide it".

7. West Mercia Police provided an internal review on 12 April 2024, in which it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 21 April 2024 to complain about the way her request for information had been handled. Her grounds were as stated when asking for an internal review, ie she did not accept the exemption cited and was happy for any personal information to be redacted.

9. The Commissioner had a meeting with West Mercia Police on 7 August 2024 to discuss the case. As a result, a revised response was sent to the complainant, disclosing some information and she was invited to provide her views.
10. On 13 August 2024, the complainant then submitted further evidence, which she had obtained from the RSPB (which isn't subject to FOIA), to support her view that further information should be held.
11. Following further correspondence, the Commissioner advised West Mercia Police that he would expect it to search the OIC [Officer in Charge]'s email account for information, were it still retained.
12. West Mercia Police acted on this evidence and did further searches, which included retrieving the retired OIC's email account from back-up tape. This information was subsequently read and considered to ascertain whether any of it was in scope.
13. On 1 November 2024, West Mercia Police disclosed some further information, with redactions under sections 40(2) and 30(1) of FOIA. The Commissioner again sought the complainant's views.
14. On 15 November 2024, the complainant suggested another area for West Mercia Police to search as she had further evidence from the RSPB as to where information might be held. The Commissioner put this to West Mercia Police.
15. On 4 December 2024, West Mercia Police advised the Commissioner that it wished to rely on section 12(2) to refuse to undertake any further searches; the complainant has not been advised regarding this change of position to forego any further delays. The Commissioner does not consider that she is disadvantaged to any extent as she is able to appeal this position if she disagrees.
16. The Commissioner will not consider the citing of section 40 as the complainant has indicated that she is happy for any personal information to be withheld. He will consider the citing of section 30(1) in respect of information that has already been located but withheld under this exemption. He will also consider the citing of section 12(2) of FOIA as regards to any further searches being required.
17. The Commissioner has viewed any information that has been located.

Reasons for decision

Section 30 – Investigations and proceedings

18. This has been cited in respect of some of the decision-making processes in the force's investigation, albeit a summary of the outcome has been provided.
19. Section 30(1)(a) provides that information held by a public authority is exempt information if it has, at any time, been held by the authority for the purposes of:
 - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it.
20. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
21. Consideration of section 30(1) is a two-stage process. Firstly, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test.

Is the exemption engaged?

22. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) of FOIA.
23. The Commissioner has published guidance on section 30 which states that section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
24. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged. Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence...".
25. West Mercia Police has explained that:

“This was an investigation into alleged taking/killing of a wild bird, namely a buzzard - a species protected at all times under the Wildlife and Countryside Act 1981. There were also allegations of breaches of the general licence issued under the same Act. The investigation commenced after an operation conducted by the RSPB. A proportionate investigation took place and after exhausting all reasonable lines of enquiry a determination was made by the supervising Sergeant that the evidential test has not mean [sic] met. Had it been, the public interest test would apply in this case. As the requirement for prosecution is both the evidential and public interest tests to be met it was decided to take no further action in this case”.

26. The Commissioner is satisfied that the information in question relates to a specific investigation being undertaken by West Mercia Police and, therefore, that the exemption at section 30(1)(a) is engaged.

The public interest test

27. Section 30(1)(a) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
28. When considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
29. The purpose of section 30 of FOIA is to protect the police’s (and other applicable public authorities’) function of carrying out effective investigations.

Public interest arguments in favour of disclosure

30. The complainant did not provide any arguments specific to this exemption.
31. West Mercia Police has argued:

“Disclosure of this information could promote public trust in providing transparency and demonstrating openness and accountability into how an investigation took place. It could also provide reassurance to the public that the police service takes all reports of wildlife crime being committed seriously and conducts investigations appropriately. To disclose this information could allow the public to have a better understanding of the effectiveness of West Mercia Police within a specific area of wildlife crime”.

Public interest arguments in favour of maintaining the exemption

32. West Mercia Police has argued:

“Disclosing investigative information under the Freedom of Information Act, would undermine the existing procedures governing the disclosure of information specific to the crime. Such disclosure could act as a deterrent to those providing information to the police and act as a disincentive to victims and potential witnesses coming forward. To make public the specific details obtained during the course of an investigation would undermine this”.

The Commissioner’s decision

33. 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.

34. In balancing its position, West Mercia Police argued:

“Raptor crime is one of the UK’s wildlife crime priorities and reassuring the public that these crimes are being investigated effectively is in the public interest. That has to be balanced with the requirement to protect certain information in relation to specific investigations from being placed into the public domain for all to see. What is in the public interest is not what interests the public but what would be beneficial to the public at large. There is very little public interest in disclosing all correspondence of all parties involved in this investigation. It is certainly not in the public interest to undermine future prosecutions in raptor crime and enable crime to increase. Modern-day policing is intelligence-led and partner agencies need to be able to work together to combat raptor crime. It is for these reasons that the public interest favours non-disclosure”.

35. In reaching a view on where the balance of the public interest lies in this case, the Commissioner has taken into account the nature of the requested information as well as the views of both the complainant and West Mercia Police.

36. He 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 general need for transparency and

accountability on the part of public authorities which are tasked with enforcing the law.

37. However, in carrying out this exercise, appropriate weight must be afforded to the public interest inherent in the exemption. In broad terms, the exemption at section 30(1)(a) exists to ensure the effective investigation of offences. It recognises the need to prevent disclosures that would prejudice either a particular investigation, or investigatory processes generally, including any prejudice to future investigations.
38. The Commissioner recognises the very strong public interest in protecting the investigative capabilities of the police. He accepts that, in general, disclosure of this type of information is prejudicial to the police's investigative capabilities, as it can assist potential offenders to evade apprehension – and also possibly put those who reported the matter at risk of some sort of retaliation.
39. The Commissioner further notes that some details about the case have been provided, which he considers goes some way towards satisfying the public interest in transparency. However, the precise reasoning as to why the case did not proceed is being withheld because the information could be used to potentially thwart such investigations in the future.
40. On balance, the Commissioner considers that the disclosure of information that could adversely affect policing capabilities, or which could deter people from reporting matters to the police, is not justified by the limited benefit which would flow from its disclosure. For this reason, the Commissioner accepts that the public interest in maintaining the exemption is stronger than that in disclosing the withheld information.
41. Accordingly, the Commissioner is satisfied that West Mercia Police was entitled to rely on section 30(1)(a) of FOIA to refuse to disclose this information.

Section 12 – Cost of compliance exceeds appropriate limit

42. This exemption has been cited in respect of West Mercia Police conducting additional searches to try to locate any further information in respect of part (3) of the request.
43. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.

44. The appropriate limit is set at £450 for West Mercia Police by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the fees regulations).
45. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours, and specify the tasks that can be taken into account when forming a cost estimate as follows:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
46. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The Commissioner's guidance on section 12¹ states that, as a matter of good practice, public authorities should avoid providing information found through any searches already conducted and then claiming section 12 for the remainder of the information, as has happened in this case. However, the Commissioner recognises that in the particular circumstances of this case, it was not obvious to West Mercia Police that section 12 might be engaged until the complainant provided further, contextualising information, during the Commissioner's investigation.
47. The question for the Commissioner here is, therefore, whether the cost estimate by West Mercia Police in respect of the necessary searches was reasonable. If it was, then section 12(2) was engaged and West Mercia Police was not obliged to confirm or deny whether any further information was held.
48. In respect of the searches for information which it has undertaken, and why it considers that the appropriate limit has already been met in this case, West Mercia Police has advised the Commissioner as follows.

“...in order to ascertain whether we hold any further information (for Q3) is going to exceed to exceed [sic] the fees limit. Specifically, the searches conducted thus far have been focussed on the OIC, PC [name redacted], and their Sergeant, PS [name redacted], as they do hold information in relation to this

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-12-requests-where-the-cost-of-compliance-exceeds-the-appropriate-limit/>

request. However, the applicant seems insistent on further searches being conducted to ascertain what is held – it is these further searches (on top of what has already been carried out) that will exceed the fees limit.

...

- Searches for email correspondence of (retired) PC [name redacted] have been carried out. These took 2 hours to conduct.
- PS [name redacted] searched for correspondence relating to this matter. This is estimated to have taken 1 hour. PS [name redacted] was also contacted initially to obtain the information for Q1, 2 & 4, 5 – approx. 30 minutes to retrieve. 1.5 hours total.
- Further checks for an email from Insp [name redacted]. Estimated to have taken 30 minutes.
- My time for considering what could be held in relation to the above, including discussing with colleagues what could be held: 2 hours.
- A colleague's time spend considering what could be held: Approx. 1 hour.

TOTAL: 7 hours

- When the emails were retrieved, I spent a significant amount of time trying to ascertain what was held material and what was not. This included filtering out non-relevant emails and duplicates. There were 106 email chains (circa 4-500 individual emails). This initial sift took 4 hours.
- This initial sift narrowed the correspondence to 23 email chains. There were still some duplicates/non-relevant material which needed to be extracted from the relevant material. This further sift took around 2 hours.

TOTAL: 6 hours

... To ascertain whether any further information is held will involve determining which further officers/staff within West Mercia Police had dealings with this case. This involves looking at the crime file and discussing with the OIC/Sergeant. The OIC has retired and the Sergeant is currently on long-term leave which means that the people with detailed knowledge of the case are not available to discuss it with. This makes it almost impossible to create a list of specific email addresses to search upon. It is very difficult to put a timeframe on this but investigative work to ascertain all persons who were/could have been contacted about this case is likely to take in the region of a days work – i.e. 8 hours. That does not take into account any further time to review any email correspondence that transpires.

This request also involved multi-agency partners – including the CPS, NWCU and RSPB – which adds to the equation of determining what is held. Whilst numerous of their correspondence has been captured from the search of PC [name redacted]' email account, this is not foolproof and further email correspondence could have been received from them. Knowing, however, who this was sent to would require liaison with those external agencies in the first instance. Even ascertaining the best person to speak to at each organisation could take 1 hour of work and then any information gleaned [sic] would have to be cross-referred at West Mercia Police's end – checking individual email accounts for example.

Even with a list of named individuals, email searches have to either be (a) conducted manually by the person themselves or (b) by our ICT department. This is a judgement call depending on which method is best placed to capture sufficient email correspondence. ICT searches are extensive but are dependent on the parameters set – i.e. timeframe, key words, email domain etc. These searches bring up a lot of false positives (as described above with PC [name redacted]'s emails) which take a long time to sift through – typically in the region of 1 hour per 100 emails just for an initial sift (and this can vary massively depending what is retrieved).

It is not possible to estimate how long it would take to retrieve any such emails without knowing which email addresses to look at or how many emails are retrieved. As a starting point, this investigative work and searches would likely take at least 16 hours of work (based on a day's work to determine who and a further day to conduct an initial sift).

TOTAL: 16 hours.

The above considers email correspondence only. Letters and other correspondence, such as text messages, phone calls, voicemails, WhatsApp messages, Teams messages etc have not been considered so as to reduce the scope. These forms of communication (especially letters and phone calls) are unindexed and working out a starting point to search can be difficult. For example, a letter could have been sent to a named individual about this matter but will not necessarily be attached to the crime file as it was not relevant to the investigation. This could have subsequently been linked to a complaint or now destroyed and whilst a letter may be addressed to, for example, the Chief Constable it is highly unusual for letters to be actioned by the Chief themselves and they are ordinarily forwarded to another department to action. This could be the Professional Standards department if a complaint is alluded to or locally, such as the Local Policing Area or a specific department. It is often very hard to trace

individual items of correspondence. Sometimes even finding one letter can take over 1 hour of work or a conclusion being reached that it has been destroyed.

It is impossible to quantify how long it would take to ascertain what other correspondence is held for this matter due to the various types of correspondence and locations it could be.

Overall, it has taken 13 hours to date to determine what is held. In order to ascertain if other information is held would take at least a further 16 hours. That does not account for fully extracting relevant information. That estimate is based on emails alone and does not include further correspondence”.

49. The Commissioner notes that these estimates are partly based on work that has actually been undertaken so there is some degree of accuracy. Initially the force searched for information based on what it knew about the OIC, who had retired, and then expanded its search when the Commissioner asked it to ascertain whether anything was still held in any back up copies of that officer's work, which it did. The complainant then suggested further searches, based on information she had gleaned from the RSPB; this is not something that the Commissioner would have reasonably expected the force to have known to do, as the OIC was not available for consultation. It did some searches as suggested, making further disclosures, but then refused to make further searches citing this exemption and the mounting costs of complying with the request.
50. Having considered the estimate above, the Commissioner considers that the actions described are realistic and proportionate. On this basis he finds the estimate to be a reasonable one. The Commissioner therefore concludes that section 12(2) is engaged and West Mercia Police was not obliged to confirm or deny holding any further information.

Section 16 – advice and assistance

51. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general, where section 12 is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
52. In this case, West Mercia Police has reached the appropriate limit whilst dealing with the request, having undertaken additional searches as requested by the complainant during this investigation. It said to the Commissioner:

“Sensible and reasonable searches for held information have been carried out. These were carried out as, whilst time-consuming, they would not exceed the fees limit and pertinent information has been captured that is relevant to this request. The extensive searches detailed above will. The applicant has been advised of these reasonable searches and information has been disclosed, subject to applicable exemptions. It has therefore not been necessary to provide further advice and assistance as it was felt that information relating to their request was captured and communicated to them”.

53. The Commissioner considers that West Mercia Police has attempted to provide appropriate advice and assistance in the actions it has taken to date and he finds no breach.

Right of appeal

54. 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

55. 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.
56. 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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