

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2025

Public Authority: Chief Constable of West Yorkshire Police
Address: PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested a list of subscribers to the Police National Legal Database of offence wordings. West Yorkshire Police (WYP) refused to disclose the requested information on the grounds that it was exempt under section 43 (Commercial interests) of FOIA.
2. The Commissioner's decision is that WYP was entitled to rely on the exemption to refuse the request.
3. The Commissioner does not require further steps as a result of this decision.

Background

4. The Police National Legal Database (PNLD) is a commercial business under the governance of WYP. Its website states that it is an information resource of criminal justice legislation. It contains Acts of Parliament, common law, regulations, orders and byelaws, case summaries and the standard offence wordings and codes used throughout the court system of England and Wales. The information is annotated with explanations and guidance written by a legal adviser. The database is available on subscription to support all those with an interest in criminal justice, whether professionally, academically or for personal development.

5. On 15 June 2024, the complainant wrote to WYP and requested information in the following terms:

"Please provide me with a list of police forces and other organisations and authorities that currently have special access to the Police National Legal Database. By special access, I mean a level of access that would not normally be afforded either to a typical commercial organisation or an ordinary member of the public.

Please exclude the security services of the UK and other NATO members from the scope of my request."

6. Following an exchange of correspondence with WYP, he submitted a revised request, the response to which is the subject of this decision notice.

Request and response

7. On 16 July 2024, the complainant wrote to WYP and requested information in the following terms:

"In your response you wrote: 'Access to PNLD's dataset of offence wordings is by way of subscription/licence to organisations for law enforcement purposes only.' Please could you provide a list of the organisations who have access?"

8. On 8 August 2024, WYP notified the complainant that it was considering the application of section 43 of FOIA and needed additional time to consider the balance of the public interest, as it was entitled to do under section 17(2) of FOIA.

9. On 6 September 2024, WYP responded to the request. It refused to disclose the requested information on the grounds that it was exempt under sections 40(2) (Personal information) and 43 (Commercial interests) of FOIA. It maintained this position at internal review, stating:

"The information you are requesting is a valuable piece of information created and owned by the Police National Legal Database (PNLD), which is governed by West Yorkshire Police, that competitors within the market could use to their commercial advantage. Should the list of those that have access to this list be disclosed in an FOI request, this could be used by competitors to then approach current subscribers and prejudice PNLD's commercial interests. This would have a direct impact on the commercial interests of PNLD by affecting its ability to raise revenue."

Scope of the case

10. The complainant contacted the Commissioner on 27 October 2024 to complain about the way his request for information had been handled. He disagreed with WYP's decision to refuse his request and said that the reasons given for withholding the information did not appear to be fully relevant to the request.
11. During the Commissioner's investigation, WYP varied its position on the request. Although it maintained that section 43 applied, it introduced sections 31(1)(a), (b) and (c) (Law enforcement) of FOIA to also withhold the information. It withdrew reliance on section 40(2) of FOIA.
12. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption, either before the Commissioner or the First-tier Tribunal, and both must consider any such new claims
13. The analysis below considers whether WYP was entitled to rely on the cited exemptions to refuse the request. The Commissioner has viewed the withheld information.

Reasons for decision

Section 43 – Commercial interests

14. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
15. 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).

16. WYP's position is that disclosure would prejudice the commercial interests of PNLD and its subscribers; the Commissioner has received submissions directly from PNLD on this point.
17. PNLD explained that its legal database provides an up-to-date, accurate and comprehensive criminal law resource for police and law enforcement agencies across the criminal justice system. While some subscribers are publicly identified on its website, many are not.
18. As set out in paragraph 4, the legal database includes standard offence wordings which are used by law enforcement bodies for charging specific offences, and the codes allocated to identify each offence. This information is downloadable and it is updated by PNLD on a daily basis.
19. Access to the legal database is subject to general contractual terms. Access to the downloadable dataset of standard offence wordings is subject to more restrictive contractual terms and to intellectual property protection. Subscribers may only use it for law enforcement purposes.
20. PNLD regards the downloadable dataset of standard offence wordings as a public asset, maintained and provided for the benefit of law enforcement bodies, and, by extension, for the wider public good. The fact that the dataset is updated regularly and is downloadable means it is a unique product and, therefore, a high value asset. The provision of IT services to policing is a multi million pound market. PNLD has been approached by commercial organisations and asked to share the information more widely, for commercial purposes, and it has refused.
21. PNLD shared with the Commissioner recent instances whereby unauthorised third parties have gained access to the database by means of it being shared with them by existing subscribers. They have then attempted to commercially exploit the database to offer similar services, in competition with PNLD.
22. Although sharing the database is a clear breach of contractual terms, PNLD still has to expend resources on dealing with such breaches and protecting its own commercial position. PNLD has a relatively small team of staff and it operates on a not-for-profit basis, funded by the fee that subscribers pay to access and use the legal database.
23. WYP and PNLD are concerned that disclosing the list of subscribers into the public domain will increase these hostile approaches for unauthorised access to the database. Such access would result in increased instances of the replication of PNLD's product, and a reduction in PNLD's competitive advantage as more service providers enter the market and compete against it. This will lead to a reduction in PNLD's revenue and funding. It will also require PNLD to expend resources to defend its commercial position.

24. WYP considered that prejudice “would” occur, because of the clear evidence it had that a number of third parties had already sought to exploit PNLD’s data by approaching known subscribers. Consequently, it argued that the chance of harm occurring as a result of disclosure is real, significant and not remote.
25. With regard to the three criteria set out in paragraph 15, the Commissioner is satisfied that the prejudice envisaged by WYP relates to the commercial interests of PNLD. His [guidance on section 43](#) explains that a commercial interest relates to a legal person’s ability to participate competitively in a commercial activity – in this case the provision of legal resources to law enforcement bodies.
26. Next, the Commissioner has considered whether a causal link exists between the disclosure of the subscriber list and prejudice to PNLD’s ability to compete in the market. In doing so, he has borne in mind that disclosure under FOIA must be treated as being “to the world at large” and so account must be taken of any harm that may be caused by the information being accessed by potential rivals in the market.
27. PNLD has evidence that subscribers have recently been targeted in an attempt to commercially exploit the database by third parties. The Commissioner therefore accepts that a causal link exists between the disclosure of the subscribers’ identities and prejudice to PNLD’s commercial interests. He is satisfied that the prejudice is real and of substance.
28. For much the same reason (ie PNLD’s direct experience of previous instances when information from its database has been obtained by unauthorised third parties) the Commissioner considers that the envisaged prejudice “would” occur (“Would” prejudice means that if the information is disclosed, it is more probable than not that the harm identified would occur, although it is not absolutely certain.)
29. As each of the criteria in paragraph 15 is satisfied, the exemption provided by section 43(2) is engaged.

Public interest test

30. 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

31. The complainant has not offered any public interest arguments in favour of disclosing the information, although in his internal review request he

criticised the public interest arguments WYP cited for withholding the information as "...vague, generic and lacking in detail".

32. WYP acknowledged the general public interest in openness and transparency that would be served by disclosure.

Public interest arguments in favour of maintaining the exemption

33. WYP cited the public interest in protecting a public asset from unauthorised commercialisation by a third party. It said PNLD already faces challenges in relation to the protection of its data. It was of the view that disclosing the withheld information would increase the risk to PNLD of being able to continue to provide its services, given that it is reliant on subscriber fees for its funding.
34. It argued that the inability of PNLD to provide the services would be detrimental to the public purse and would leave law enforcement bodies reliant on inferior legal resources.
35. It noted that existing private sector competitors are not subject to FOIA and so would not be compelled to reveal their customer lists. PNLD is therefore being placed at a commercial disadvantage to them by being asked to reveal its customer list.
36. WYP considered that some subscribers would regard their subscription to PNLD to be quite sensitive information which they may choose not to share. It argued that there is a strong public interest in fostering confidence within the business community that commercially sensitive information will be exposed only in compelling circumstances.
37. WYP also noted the strong public interest in preserving confidence, in treating competing service providers equally and fairly and in protecting PNLD regarding the provision of its services.

Balancing test

38. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the withheld information, or to withhold it, because of the interests protected by the relevant exemption.
39. The Commissioner accepts that, generally speaking, 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, as regards their commercial use of publicly owned assets. Although some information about larger subscribers is already on PNLD's website, disclosure of the withheld information would reveal more detail about its subscriber base.

40. However, WYP has emphasised PNLD's need to be able to participate competitively in the commercial market. The Commissioner's guidance lists a number of public interest arguments that should be considered against disclosure, which include 'competition' – there is undoubtedly a public interest in allowing public authorities to withhold information which, if disclosed, would negatively affect their ability to compete commercially.
41. Other arguments that are relevant in this case include the protection of PNLD's ability to self-fund its service and the loss of customer confidence.
42. The Commissioner accepts that disclosing the withheld information would jeopardise PNLD's ability to protect its income stream. Disclosing information which would put PNLD (and a public asset) at such a disadvantage would not be in the public interest.
43. Having accepted in this case that disclosure would be damaging to PNLD's commercial interests, the Commissioner can see no stronger arguments for disclosure which justify that potential for damage.
44. The Commissioner's decision is, therefore, that the public interest in maintaining the exemption is clearly stronger than the public interest in disclosing the subscriber list and therefore that WYP was entitled to rely on section 43(2) of FOIA to withhold the information.
45. In view of this decision, it is not necessary for the Commissioner to also consider WYP's application of section 31 to withhold the same information.

Right of appeal

46. 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

47. 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.
48. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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