

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2025

Public Authority: Chief Constable of North Wales Police
Address: Police Headquarters
Glan-y-Don
Abergele Road
Colwyn Bay
LL29 8AW

Decision (including any steps ordered)

1. The complainant has requested information about the deployment of Live Facial Recognition (LFR) technology during a particular policing operation. North Wales Police (NWP) referred the complainant to information about the results of the deployment on its website. It said that other information it held was exempt from disclosure under sections 31(1)(a) and (b) (Law enforcement) of FOIA. It said it did not hold the remaining information specified in the request.
2. The Commissioner's decision is that NWP was entitled to rely on sections 31(1)(a) and (b) to withhold a small amount of operational information about the deployment of LFR. He found that these exemptions were not engaged in respect of the remaining information it held. He was also satisfied that, on the balance of probabilities, NWP did not hold further information falling within scope of the request.
3. The Commissioner requires NWP to take the following steps to ensure compliance with the legislation.
 - Disclose the information which the Commissioner has determined does not engage the exemptions at sections 31(1)(a) and (b) of FOIA.
4. NWP must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. NWP's [LFR Policy](#) says the following about LFR:

"Images from specially placed cameras are searched against a Watchlist of Candidate Images of people who are wanted, or based on intelligence are suspected of posing a risk of harm to themselves or others. Watchlists composition is normally restricted to individuals suspected to be in the proximity of an area, and therefore where there is some possibility or likelihood of an individual passing through an LFR Deployment...Where the LFR application identifies a Possible Match, the LFR system flags an Alert to a trained member of personnel who then makes a decision as to whether any further action is required."

Request and response

6. On 3 September 2024, the complainant wrote to NWP and requested information in the following terms:

"I am writing to request the following information relating to North Wales Police LFR deployments at Holyhead:

- A copy of any evaluation report or similar of the outcome of those deployments
- A copy of any definition of or criteria for 'success' for those deployments, and any document considering whether these were met".

7. NWP responded to the request on 5 September 2024. As regards the first bullet point of the request, it referred the complainant to [information on its website](#) about an LFR deployment at Holyhead Port in May 2024. For the second bullet point, it said there was no specific definition of, or criteria for, "success", as it depended on the specific strategic aims set by the authorising police officer. On that basis, it said it did not hold any information falling within scope of the second bullet point.
8. The complainant requested an internal review of the response on 6 September 2024. For the first bullet point, he asked for any non-published evaluations of the deployment, or similar information, (including internal memos assessing the deployment or similar

documents) to be disclosed. As regards the second bullet point, he believed recorded information would be held on what the goals of the deployment were and whether / how they had been met.

9. NWP provided the internal review outcome on 12 September 2024. It revised its position, saying that it held information falling within scope of the request, but said it was exempt from disclosure under sections 31(1)(a) and (b) of FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 19 September 2024 to complain about the way his request for information had been handled. He disagreed with NWP's application of sections 31(1)(a) and (b) to withhold information. He argued:

"NWP used the 'success' of the Holyhead LFR deployment as justification for further use of the technology – however the Holyhead deployment saw 0 matches and 0 arrests. To a member of the public a zero hit rate is not likely to be viewed as successful, and it is therefore of vital importance that the public is able to understand what success looked like for NWP and how this was measured."

11. During the Commissioner's investigation, NWP confirmed that, other than the information it had already provided in its initial response, it did not hold information of the type described in the first bullet point of the request. It said that the withheld information fell within the scope of the second bullet point.
12. The withheld information includes the names of non-senior police officers. The complainant has agreed that these names may be excluded from the scope of the information being considered for disclosure.
13. The analysis below considers whether, on the balance of probabilities, NWP holds any further information falling within the scope of the first bullet point of the request. The Commissioner has also examined NWP's application of sections 31(1)(a) and (b) to withhold the information falling within scope of the second bullet point of the request.

Reasons for decision

Section 1 – General right of access to information held by public authorities

14. The Commissioner has considered whether NWP holds further information falling within scope of the first bullet point of the request,

under section 1 of FOIA. Information about his approach to this can be found in the [Commissioner's Decision notice support materials](#) section of the ICO website. It explains that the Commissioner must decide "on the balance of probabilities" whether further information is held.

15. When requesting an internal review, the complainant asked NWP whether it held any non-published evaluations or similar information, including internal memos assessing the deployment or similar documents.
16. NWP says that it disclosed all the information it holds falling within scope of the first bullet point of the request (ie a summary of the results of the LFR deployment) in its initial response to the request. It says it does not hold "[a] copy of any evaluation report or similar of the outcome of those deployments". It has confirmed to the Commissioner that it does not hold any internal memos or other non-published evaluations regarding the LFR deployment.
17. NWP provided the Commissioner with details of the searches it undertook to locate any such information. The Commissioner considers they were appropriate and would have been capable of locating further information, were it held.
18. NWP also clarified that the reason the internal review found section 31 was engaged in respect of some information was not because that information had only just been located. Rather, as a result of the clarification the complainant provided in his internal review request, a document which had earlier been considered out of scope was now considered to fall in scope.
19. The complainant appears to believe that for NWP to be able to declare the deployment 'successful', further information evaluating its outcome must be held. On that point, the Commissioner would argue that a number of outcomes could be considered as indicative of the 'successful' deployment of LFR, which would not necessarily require any underlying analysis to exist. Whilst the complainant has highlighted that the deployment did not result in the positive identification of a "Watchlisted" person, that is not necessarily an indicator of success / failure.
20. For example, if nobody on the Watchlist of Candidate Images passed through Holyhead Port during the deployment, the fact that the LFR did not alert cannot be considered a "failure". The fact that the deployment registered "zero alerts" also confirms that there were no false positive alerts, which is itself an indicator that the LFR was operating as intended and therefore "successful". Accordingly, the Commissioner does not consider that NWP's comments regarding the success of the deployment indicate that further, underlying information is held.

21. In view of the answers NWP has provided to the Commissioner's questions, and in the absence of any compelling evidence which points to the existence of further information, the Commissioner considers that, on the balance of probabilities, NWP has disclosed all the information it holds which falls within the scope of the first bullet point of the request.

22. It follows that he finds no failure to comply with section 1(1) of FOIA.

Section 31 – Law enforcement

23. Section 31 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.

24. Subsections 31(1)(a) and (b) of FOIA state that information is exempt if its disclosure would, or would be likely to, prejudice:

(a) the prevention or detection of crime; and

(b) the apprehension or prosecution of offenders.

25. Section 31 is a prejudice-based exemption. This means a public authority can only rely on it where disclosing the information could cause harm. To demonstrate the harm, it must satisfy a prejudice test.

26. When setting out its reasons for applying section 31, the Commissioner expects a public authority to identify:

- the law enforcement interests protected by section 31 which could be harmed by the disclosure;
- whether the harm that has been identified is real, actual or of substance and what the causal link is between disclosure and that harm; and
- the level of likelihood of that harm actually occurring: would it occur, or is it only likely to occur?

27. Section 31 is a qualified exemption: even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

28. The withheld information in this case comprises a Written Authority for the deployment of LFR at Holyhead Port in May 2024. It is "...a decision-making audit trail demonstrating how the [Authorising Officer] has considered the legality, necessity and proportionality of the deployment, the safeguards that apply to the deployment and the alternatives that were considered but deemed to be less viable to realise the policing

purpose". It contains a limited amount of operational information about the deployment.

The complainant's position

29. The complainant felt that NWP's arguments regarding likely prejudice were generic and did not offer meaningful insight into how the withheld information had a causal connection to prejudice under sections 31(1)(a) and (b).

NWP's position

30. NWP argued that the information would allow anyone intent on criminality to build up a picture of the effectiveness of its tactical resources, including how and where they are deployed.

31. Arguing that prejudice "would" occur, it said:

"If NWP were to release this information it would provide intelligence and details of how NWP carry out such activities and would be harmful to any future opportunities for deployment again. As individuals would know exactly where the cameras were located and what they were being used for, enabling them to use other entry methods/tactics to avoid detection.

...

The document contains operational / tactical information and release of this information would have a direct negative impact.

To counter criminal and terrorist behaviour it is vital that the police can protect sensitive information that could be used to identify resources and could be harmful and lead to law enforcement tactics being compromised. Releasing the information requested would provide those intent on committing criminal or terrorists acts with valuable information as to how North Wales Police carry out such deployments."

The Commissioner's position

32. When explaining their application of section 31, the Commissioner expects public authorities to be clear on which sub-section(s) they are relying on and why each sub-section applies.
33. The Commissioner has considered the arguments put forward by NWP, both in its correspondence with the complainant and in its response to the Commissioner's questions about section 31.

34. He accepts that its arguments relate to the prevention or detection of crime and to the apprehension or prosecution of offenders – the law enforcement interests protected by section 31(1)(a) and (b).
35. With respect to the likelihood of harm occurring, he notes that NWP considers that harm “would” occur as a result of disclosure.
36. The Commissioner is not satisfied that NWP has demonstrated any causal link between disclosure of the majority of the information in the Written Authority and the harm it has identified. In other words, he is not satisfied that (with limited exceptions) it has demonstrated that disclosing it would, or even that it would be likely to, harm efforts to prevent or detect crime or to apprehend or prosecute offenders.
37. The Commissioner recognises the importance of protecting information which, if disclosed, is capable of undermining criminal law enforcement. However, based on the submissions provided, he is not satisfied that NWP has demonstrated that most of the withheld information is of a quality that would lead to such harm, if it were disclosed.
38. The Commissioner finds that much of the information in the Written Authority is of a generic nature, talking about risks, benefits and uses of LFR in general terms. NWP has not provided submissions which explain how general information on the use of LFR in a law enforcement context, would harm law enforcement: it has simply asserted that it would. While it has submitted particular arguments about the location and capability of the LFR camera(s), these arguments are not relevant to the majority of the withheld information.
39. As set out in paragraph 28, only a very limited amount of the withheld information reveals specific operational and tactical information. The majority of the document assesses how any risks to personal privacy are mitigated by data processing safeguards, or balanced by the wider benefits of using LFR. The Commissioner does not agree that it reveals meaningful information about particular police tactics, or areas of weakness. NWP has not explained how the disclosure of that information would prejudice the law enforcement interests protected by sections 31(1)(a) and (b) and it is not otherwise obvious to the Commissioner that disclosure would, or, indeed, that it would be likely to, be prejudicial.
40. It appears to the Commissioner that sections 31(1)(a) and (b) have been applied in a ‘blanket’ fashion to withhold the entire document, when there is no clear justification under sections 31(1)(a) and (b) for doing so, and NWP has not provided clear arguments explaining why.
41. The Commissioner has therefore concluded that the majority of the withheld information does not engage sections 31(1)(a) or (b). Having

reached this conclusion, it has not been necessary to go on to consider the public interest test in respect of that information.

42. However, the Commissioner accepts that the disclosure of a limited amount of the withheld information “would” be harmful to the law enforcement interests protected by sections 31(1)(a) and (b). The information in question reveals the intended location of the LFR camera/s as well as operational information about the reasons for LFR deployment, and information which might render some individuals on the Watchlist identifiable to themselves or to others.
43. The Commissioner accepts that this is information which would enable criminals to build up an understanding of LFR capabilities and policing strategies, and to use this knowledge to try to circumvent law enforcement. He accepts that its disclosure would be harmful to the law enforcement interests protected by sections 31(1)(a) and (b) and that the likely harm is real and of substance. He is satisfied that the exemptions are engaged in respect of this specific information.
44. For the avoidance of doubt, the Commissioner has identified the information that he considers engages sections 31(1)(a) and (b) in a confidential annex to this decision notice, which is being provided only to NWP.
45. He has gone on to consider whether the public interest favours disclosing this information or maintaining the exemption at sections 31(1)(a) and (b).

Public interest test

46. 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

47. The complainant felt that NWP’s public interest arguments lacked specificity and were generic arguments that it had used when responding to other FOIA requests. He also argued that NWP did not take account of the clear public interest in disclosure:

“...it is my view that there is a specific public interest in the issue of live facial recognition due to the controversial nature of the technology. LFR has been subject to legal challenge, and continues to be, and is the focus of significant opposition from parts of society. Therefore beyond the general public interest in transparency, there is a specific public

interest in information around the issue and this should be accounted for in the balancing test.

There is also specific public interest in the information itself, as it is crucial in understanding a particular decision by NWP to further use controversial technology."

48. NWP noted that the public interest in accountability and transparency regarding public spending on law enforcement would be served by disclosure.

Public interest in maintaining the exemption

49. Arguing in favour of maintaining the exemption, NWP said:

"To release detailed information relating to tactics utilised by North Wales Police would have a detrimental effect on our policing capabilities...Any disclosure of information which would compromise law enforcement tactics and thus lead to more crime being committed by reducing the opportunity for the prevention and detection of crime, would therefore increase the risk to public safety, which is not in the public interest.

...

North Wales Police has a duty of care to the community at large and public safety is of paramount importance."

The balance of the public interest

50. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test. He also acknowledges that the use of LFR technology in the UK has been the subject of public debate, and [legal action](#), over concerns about possible bias and the effectiveness of privacy safeguards.
51. 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 or prosecution of offenders.
52. As set out above, he is satisfied that harm to these matters would occur if specific, operational information was made public. Clearly, it is not in the public interest to disclose information that would compromise the police's ability to accomplish its core functions of law enforcement and protecting the public.

53. The Commissioner also notes that the information under consideration here offers little meaningful insight into whether the deployment in question was efficient, proportionate or appropriate, and so the public interest in having information on those matters would not be served by its disclosure.
54. 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.
55. 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 withheld information.

The Commissioner's decision

56. The Commissioner's decision is that NWP was entitled to rely on subsections 31(1)(a) and (b) of FOIA to withhold the information identified in the confidential annex.
57. However, as set out above, the remaining information that it holds does not engage the exemptions at sections 31(1)(a) and (b). NWP must now take the steps set out in paragraph 3, above.

Right of appeal

58. 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

59. 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.
60. 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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