



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 28 June 2006

Public Authority: The Chief Officer of Police of Lancashire Constabulary

**Address: Lancashire Constabulary Headquarters
PO Box 77
Hutton
Preston
PR4 5SB**

Summary Decision and Action Required

The request was for information about the policing of a football match. As the investigation progressed, the focus of the request became information held in an Operational Order and in police note books. The public authority withheld information contained in the Operational Order on the grounds that it was exempt information under s.31. This provides that information is exempt if its disclosure would, or would be likely to, prejudice law enforcement functions. The Information Commissioner's ("the Commissioner") decision is that although the majority of the information in the Operational Order is exempt information and can be withheld in the public interest, there is still a substantial amount of information in the Order which did not engage the exemption and therefore should have been communicated to the complainant. In this respect the public authority failed to comply with s.1(1) of Part I of the Act.

The public authority is required to communicate the information contained in the Operational Order that is not exempt information to the complainant.

The public authority did not hold any of the information requested in police note books and informed the complainant that this was the case in a refusal notice that was issued within twenty working days of the request being received.

In this respect the public authority did comply with s.10(1) and s.17(1) of Part I of the Act.

However the public authority's refusal notice failed to inform the complainant of its internal complaints procedure and also failed to inform him of his right to complain to the Commissioner.

In this respect the public authority failed to comply with s.17(7)(a) and s.17(7)(b) of Part I of the Act.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The complainant has advised that on 1 January 2005 the following information was requested from the public authority in accordance with s.1 of the Act;

"...all information you have on the Policing of Coventry City football fans leading up to and subsequently after the match AGAINST (sic) Burnley including Police note books for the game on October 19th 2004."

2.2 He complained that Lancashire Constabulary (the 'Police') had refused to release the information, citing the exemption relating to law enforcement provided by s.31 of the Act. The complainant was also concerned that the Police had failed to deal with his request appropriately in that it had not advised him of any internal complaints procedure and had not provided him with the details of his right to complain to the Information Commissioner.

2.3 During the course of the investigation the complainant also raised concerns that his request had not been not dealt in accordance with the timescales set out in the Act.

3. Relevant Statutory Obligations under the Act

3.1 S.1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

3.2 S.10(1) provides that –

“...a public authority must comply with s.1(1) promptly and in any event not later than the twentieth working day following the date of receipt”.

3.3 S.17 (1) provides that –

“A public authority which... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with s.1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

3.4 S.17(7) provides that –

“ A notice under subsection (1),(3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by s.50 (the right to complain to the Information Commissioner).

3.5 **S.31** provides that -

(1) Information which is not exempt information by virtue of s.30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,

4. Review of the case

- 4.1 The complainant originally made his request on 1 January 2005 by email and by letter. The Police refused his request in a letter dated 27 January 2005. This letter constitutes a refusal notice under s.17 of the Act. A copy of the refusal notice was sent to the complainant on 4 February 2005.
- 4.2 The refusal notice informed the complainant that information relating to operational orders and intelligence reports was exempt from disclosure under s.31 of the Act. In relation to the complainant's request for information held in pocket book entries the Police assumed he was referring to the note books of particular officers who he had identified in earlier correspondence. The letter advised the complainant that the pocket books of these officers had been checked and found to contain no entries relating to the match. Although the refusal notice advised the complainant not to hesitate to contact the Police again if he thought they could be of further assistance, it did not contain any reference to an internal complaints procedure or to the complainant's right to make a complaint to the Commissioner.
- 4.3 The complainant complained to the Commissioner on 15 February 2005. He said that the Police had withheld information under s.31 of the Act. He also raised his concerns over the Police's failure to inform him either of its internal complaints procedure or of his right to make a complaint to the Commissioner.
- 4.4 The Commissioner rang the Police on the 27 April 2005 and advised them that the complainant should be offered an internal review, if one was available. Following this intervention by the Commissioner, an internal review of how the complainant's request had been handled was completed by 13 June 2005. The internal review upheld the original decision to withhold the information.
- 4.5 Therefore on 5 July 2005 the complainant again asked the Commissioner to consider his complaint. At this time the Commissioner also asked the complainant to provide a copy of the Police's letter advising him of the outcome of the internal review and to clarify the outstanding issues which still concerned him. On 3 October 2005 the complainant advised the Commissioner by email that he was forwarding the review letter by post and specified that his main concern was that the information he sought had been withheld. He was also still concerned that

when the Police had originally dealt with his request he was not advised of either the Police's internal complaints procedure or of his subsequent right to complain to the Commissioner.

- 4.6 The internal review letter dated the 13 June 2005 explained that the information he had requested would be contained within the Operational Order of the football match in question.
- 4.7 The review letter went on to explain that the Order contained intelligence relating to the particular match and operational information on the general policing of football matches. This had been withheld under s.31 because the Police believed its disclosure could prejudice the future policing of football matches throughout the country. The Police explained that it had decided the public interest was balanced in favour of maintaining the exemption since disclosure could place the public in danger of greater harm at future matches. The Police also apologised for not providing him with the details of its internal complaints procedure.
- 4.8 The Commissioner emailed the complainant on the 28 October 2005 asking him to clarify that the focus of his request was the Operational Order for the match and the entries held in the note books of a number of officers. The complainant was also asked to identify whether there were any specific aspects of the policing operation that he was interested in so as to avoid wasting time pursuing access to information that the complainant had no particular interest in.
- 4.9 The complainant emailed a response the same day confirming that the focus of the request was the Operational Order and that the specific aspect of the police operation that concerned him related to the ejection of two Coventry City supporters from the ground at half time. In relation to the note books the complainant confirmed that his request was limited to the information held in the note books of a number of officers. At this stage the complainant also complained about that his request had not been dealt with in accordance with the timescales set out in the Act.
- 4.10 The Police advised the Commissioner that they did not hold any information about this particular incident. The Police explained that the ejection of two supporters from a football ground would have been viewed as a fairly minor incident in which club stewards would have taken the lead role. The public authority has advised that incidents of this nature would not have warranted an entry in officers' note books. The Commissioner is satisfied that information falling within the complainant's request is not recorded in police note books held by the public authority.
- 4.11 The Commissioner also wrote to the Police on 28 October 2005 asking them to confirm that, apart from any information contained in note books, all the information relating to the policing of the match was held in the Operational Order. The Police were also asked whether they had liaised with the complainant

in order to determine the scope of his request. Finally the Commissioner also asked to be provided with a copy of the Operational Order.

- 4.12 The Police responded on 20 December 2005. Due to changes in personnel the Police were unable to verify the extent of any liaison with the complainant in order to determine the scope of his original request. However they suggested that there may have been some dialogue in order to determine that his request for note books was confined to those of a limited number of officers. The Police reiterated their view that the Operational Order contained sensitive information which could compromise operational effectiveness when dealing with organised football crime. The Police had however looked at the information again and were now prepared to release one of the appendices to the Order. This defined certain offences that may occur at matches. The Police did not consider this information to be operationally sensitive.
- 4.13 The Police also proposed contacting the complainant directly in order to try and resolve his concerns as they suspected that the complainant was mainly interested in information relating to one particular incident rather than the general policing of the match. The Police did later go on to write to the complainant with a view to meeting with him to address his concerns. However it is understood that the complainant did not respond.
- 4.14 The Police provided the Commissioner with a copy of the Operational Order on 26 January 2006. In broad terms this Operational Order contains information on the command structure for policing the match, the deployment of police officers during the match, briefings on the method of policing and the offences that were likely to be encountered together with intelligence reports relating to organised football crime. There was also more general information, for example background information about the two teams and the time of kick off.
- 4.15 The Commissioner's initial view was that some information contained in the Operational Order would, or would be likely to, prejudice the purposes of law enforcement were it to be disclosed. However, there was other information in the Operational Order that could be disclosed without prejudicing, or being likely to prejudice, the purposes of law enforcement, in contexts such as the policing of football matches. On 13 March 2006 the Commissioner wrote to the Police setting out what information within the Order he thought should be disclosed to the complainant. The Commissioner also gave the Police the opportunity to provide further evidence to support its use of the exemption. This dialogue culminated in a telephone conversation on 9 May 2006 during which the Police agreed that some additional information could be released without prejudicing the policing of football matches in the future. However there was still disagreement over the sensitivity of information relating to the administrative procedures that should be followed after an arrest was made.
- 4.16 This information is about the general administrative procedures following an arrest. It did not relate to the specific aspect of the policing operation that the complainant had earlier identified as being of particular interest to him. The

Commissioner has not therefore considered whether the information is, in fact, exempt.

- 4.17 The Operational Order included references to a debriefing following the police operation. Therefore the Commissioner asked the Police whether there was any further information held in notes of the debriefing. On the 17 May 2006 the Police confirmed that the debriefing had been a verbal one and that no records were made of it.

5. The Commissioner's Decision

S.1(1)

- 5.1 The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with s.1(1) of Part I of the Act in that it failed to communicate to the complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with s.2 would authorise the public authority to refuse access.
- 5.2 This is because the exemption relied on to withhold the Operational Order did not apply to all the information held within it for the reasons set out below.
- 5.3 **S.31(1)** provides that -
- (1) Information which is not exempt information by virtue of s.30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- 5.4 Originally the Police took the view that the entire contents of the Operational Order were exempt under s.31. However on reflection they volunteered to release one appendix on Football Related Offences. As a result of the dialogue with the Commissioner during the course of the investigation the Police also agreed that other information could be released without prejudicing the purposes of law enforcement. The Operational Order contained other information that the Police thought exempt, but which the Commissioner thought should be disclosed. However this information related to general administrative procedures following an arrest and did not relate to the specific aspect of the policing operation that the complainant had identified as being of particular interest to him, i.e. the ejection of two Coventry City supporters from the football ground. In light of this the Commissioner did not see any merit in establishing the complainant's right of access to this information. Finally the Commissioner accepts that a large amount of the information contained in the Operational Order is exempt.

- 5.5 In considering whether information contained in the Operational Order ought to have been disclosed to the complainant, the Commissioner has borne in mind that the information relates to a past event. However, where disclosure of the information would compromise tactics that may be employed in future, similar police operations the information falls within the exemption at s.31 of the Act. Information on the numbers of officers and how they are deployed throughout the match together with the geographical area covered by the operation is similarly exempt as it could be used to identify any weaknesses in such an operation and to identify locations where criminal activity is less likely to be detected. This would be likely to be of assistance to those planning disorder at football matches in the future.
- 5.6 The Operational Order also includes information on some of the practical constraints that officers may encounter when carrying out their duties. The Commissioner recognises that to release this information could either expose weaknesses in the police operation or increase the vulnerability of officers. The Commissioner is satisfied therefore that this information is exempt.
- 5.7 The Operational Order also contains information on radio communications, call signs and channels used. Although the security of the modern police radio system is apparently of a good standard, there is still the potential for such communications to be listened into or disrupted. In light of this the Commissioner is satisfied that that revealing technical information about police communications would, or would be likely, to prejudice the purposes of law enforcement.
- 5.8 Throughout the Operational Order there is intelligence information relating to both sets of supporters and the likelihood of football related crime. Again, disclosing this information could help criminals avoid police detection and reveal any weaknesses in the intelligence or the intelligence gathering process. To disclose detailed assessments of particular gangs of organised football criminals would undermine attempts to reduce problems associated with their behaviour. For these reasons the Commissioner is satisfied that all the intelligence information in the Operational Order is exempt. It is noted that where the information identifies individuals the information would also be exempt under s.40, which relates to personal information.
- 5.9 Even though the Operational Order does contain a substantial amount of sensitive information this does not render the entire Order exempt. The Police are still required to communicate that information which can be released without prejudicing law enforcement functions.
- 5.10 The Operational Order also contains information on the measures taken to ensure crowd safety and procedures for evacuating the ground. Some of this information could assist terrorists wishing to maximise the effect of attacks that they may plan to carry out at football stadiums and similar venues and so is exempt. However some of the measures referred to would be familiar to many

people and is information that one would fully expect to form part of a document dealing with crowd safety. This information is not exempt.

- 5.11 In addition to the information described above the Operational Order also contains information that was already in the public domain such as the time the match kicked off, factual background information about the two football teams and their performances as well as briefings on particular offences which were likely to be relevant to policing football matches and information on the Human Rights Act. Such information is not exempt.
- 5.12 There was also information which set out, in broad terms, the objectives or intentions of the police operation. There was some more detailed information on the approach or method of policing that should be adopted to achieve these objectives. For example there was information on how officers should interact with supporters in order to reduce potential disorder. During course of the investigation Police accepted the Commissioner's view that information of this type did not engage the exemption.
- 5.13 Finally the order contained information on the administrative procedures that officers were expected to follow following an arrest. The Police maintained that disclosing this information would prejudice the prosecution of offenders. Although the Commissioner is not persuaded by the arguments presented, this is not information that the complainant expressed a particular interest in being provided with and so the Commissioner has not pursued this matter.

The Public Interest.

- 5.14 The exemption provided by s.31 is subject to the public interest test. The police's role in enforcing law and order and its interaction with civil liberties heightens the public interest in information that allows scrutiny of how the police carry out their duties. This needs to be balance against a very strong public interest in preserving the police's ability to carry out those duties effectively.
- 5.15 The Commissioner recognises that there is a public interest in disclosing information that would allow the public to assess whether the police have sufficient resources and effective tactics for tackling crime. However where disclosing information would undermine police operations not only would this erode confidence, but it could endanger public safety, perhaps on a significant scale. In their review letter of the 13 June 2005 the Police expressed the opinion that the public interest would not be served by disclosing information that could increase the risk of harm to members of the public.
- 5.16 In an email dated 19 April 2006 the Police also recognised that there was a public interest in enhancing the public's perception of police professionalism. However they went onto explain that the overall protection of those attending football matches was felt to be the priority.

- 5.17 Public scrutiny of police operations would help ensure that their response to criminal activity or the threat of criminal activity is proportionate. Where there is some credible criticism of a police operation this may increase the public interest in having access to information on the planning of that operation. However this is not a factor in this instance.
- 5.18 There are two main arguments surrounding the disclosure, or not, of the requested information. There is an argument that disclosing the information would allow public scrutiny of the methods used to police football matches and similar events. There is also an argument that releasing detailed operational and intelligence information about policing operations at football matches would be likely to prejudice their future policing and therefore to increase the risk of disorder and consequent harm being caused to members of the public. Therefore the Commissioner's Decision is that information identified as being exempt in sections 5.1 to 5.13 above may be withheld in the public interest.

Information identified as not being exempt in sections 5.1 to 5.13 above shall be communicated to the complainant in the public interest.

S.10(1) & S.17(1) –

- 5.19 The Commissioner's decision in relation to the public authority's compliance with s.10(1) and s.17(1) is that the public authority did deal with the complainant's request in accordance with the Act.
- 5.20 S.10(1) provides that a public authority must inform the applicant whether it holds the information requested promptly and in any event not later than the twentieth working day following the date of receipt.
- 5.21 S.17(1) provides that where a public authority is relying on a claim that the information is exempt information must within the twentieth working day following receipt of the request give the applicant a refusal notice.
- 5.22 The request was made by email on the New Year's Day, 1 January 2005. This being a Saturday, the first working day on which the request would have been received was Tuesday 4 January 2005. The complainant was issued with a letter dated the 27 January 2005 which was the seventeenth working day after the request had been received. This letter informed the complainant that the Police did not hold the information he had requested in police note books. The letter also advised the complainant that the Police were refusing to communicate the other information he had requested on the grounds that it was exempt information under s.31 of the Act and as such the letter also constitutes a refusal notice under s.17 of the Act. Although the refusal notice was not of an adequate standard this matter is dealt with below.
- 5.23 A copy of the letter of 27 January 2005 was sent to the complainant on 4 February 2005 (which was the twenty-third working day after receipt of the request) indicating that the complainant did not receive the earlier letter. However

the Commissioner is satisfied from the evidence presented to him that the Police did originally send the letter on the 27 January 2005 and it is this date that the Commissioner takes as being the date which the Police responded to the request.

S.17 (7)(a) & (b) –

- 5.24 The Commissioner's decision in relation to compliance with s.17(7)(a) and 17(7)(b) is that the public authority has not dealt with the complainant's request in accordance with the requirements of Part I of the Act.
- 5.25 17(7)(a) The public authority refused the complainant's request for information but when communicating this to the complainant failed to include in the refusal notice the particulars of any procedure that was in place for dealing with complaints about the handling of requests.
- 5.26 17(7)(b) The public authority refused the complainant's request for information but when communicating this to the complainant failed to include in the refusal notice the particulars of the right conferred by s.50, the right to make a complaint to the Commissioner.

6. Action Required

- 6.1 The Commissioner requires the public authority to communicate to the complainant that information contained in the Operational Order identified as non-exempt in sections 5.1 to 5.13 of this Decision Notice.
- 6.2 The Commissioner will provide the public authority with a copy of the Operational Order marked up to identify the non exempt information to ensure that the Commissioner can ascertain that the complainant has been provided with all the information that he is legally entitled to, and that the public authority is clear as to the information the Commissioner expects it to provide to the complainant.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 28th day of June 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**