

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2021

Public Authority: Chief Constable of Norfolk Constabulary
Address: Police Headquarters
Falconers Chase
Wymondham
Norfolk
NR18 0WW

Decision (including any steps ordered)

1. The complainant has requested information relating to the number of active duty serving police officers stationed throughout the force broken down by police station and geographic area from Norfolk Constabulary
2. The Commissioner's decision is that Norfolk Constabulary properly engaged section 31(1) and the public interest lies in maintaining the exemption. Therefore no steps are to be taken as a result of this decision.

Request and response

3. On 31 July 2020, the complainant wrote to Norfolk Constabulary and requested information in the following terms:

"1 The number of police stations the force currently operates that includes active serving police officers.

2 The number of police stations the force operated that included active serving police officers in 2015.

3 A full breakdown of where active duty serving police officers are stationed throughout the force broken down by police station and/or borough/local ward area (please provide both station and geographic breakdowns if they exist). Please state the numbers of officers and their

ranks stationed at individual police stations throughout the force's area of jurisdiction."

4. Norfolk Constabulary responded on 28 August 2020 providing information to parts 1 and 2 of the request and refusing to provide information at part 3 of the request under section 31(1)(a) and (b) of the FOIA.
5. On 28 September 2020 Norfolk Constabulary provided an internal review decision maintaining its original decision.

Reasons for decision

Section 31 – Law enforcement

6. Section 31(1)(a) of the 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. In this case, Norfolk Constabulary is relying on section 31(1)(a) and (b) of the FOIA in relation to the withheld information. These subsections state that information is exempt if its disclosure would, or would be likely to, prejudice: (a) the prevention or detection of crime; (b) the apprehension or prosecution of offenders.
7. In order to engage a prejudice based exemption such as section 31 there must be a likelihood that disclosure would, or would be likely to, cause prejudice to the interests that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed, has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
 - Thirdly, it is necessary to establish whether the level of likelihood of the prejudice being relied upon by the public authority is met –

ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

8. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
9. In its submission to the Commissioner, rather than differentiate between the subsections of the exemption, Norfolk Constabulary has presented one set of arguments. The Commissioner recognises that there is clearly some overlap between subsections 31(1)(a) and 31(1)(b) and she has therefore considered these together.

The applicable interests

10. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activities mentioned in sections 31(1)(a) and (b) – the prevention or detection of crime and the apprehension or prosecution of offenders.
11. With respect to law enforcement activities, the Commissioner recognises in her published guidance¹ that section 31(1)(a) will cover all aspects of the prevention and detection of crime. With respect to section 31(1)(b), she recognises that this subsection: "*...could potentially cover information on general procedures relating to the apprehension of offenders or the process for prosecuting offenders.*"
12. The Commissioner acknowledges that the arguments presented by Norfolk Constabulary refer to prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders and that the appropriate applicable interests have therefore been considered.

The nature of the prejudice

13. The Commissioner next considered whether Norfolk Constabulary has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that section 31(1)(a) and (b) are

¹ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

designed to protect. In her view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.

14. In its refusal notice Norfolk Constabulary advised the complainant that if it was to provide the details of the number of officers based at each police station in Norfolk it would disclose the strengths and capabilities of the Constabulary. It went on to explain that disclosing this level of detail would highlight those stations where officer numbers are low and that this would prejudice policing across the County and impact negatively on resources.
15. In its refusal Norfolk Constabulary also stated the following:
"It is considered that the provision of the number of officers would allow people to draw conclusions as to the perceived level of officers at specific locations. Whilst not questioning the applicant's motive for requesting the information, consideration has to be given as to who would have access to the information once released. Responses are published and are therefore accessible to all. Information regarding officer numbers and locations would be of significant interest to those involved in criminal activity. There would be the potential to determine those areas where officer numbers are likely to be lower and base their activity in these areas."
16. In its submissions to the Commissioner, Norfolk Constabulary explained that providing information on the number of active duty serving police officers stationed at locations throughout the geographical area would be detrimental as it would allow those with intent on causing disruption, access to vital information, exposing weaknesses and vulnerabilities that could leave geographical areas exposed to crime. It explained that this would then undermine the Police's ability to operate in its functions and public safety would be compromised.
17. Norfolk Constabulary also explained to the Commissioner if the information requested was to be disclosed it would provide criminals with information that may benefit them as they would be able to map out areas where there are fewer serving officers, to which they may deduce a lesser police response and this could compromise the Constabulary's ability to police effectively and protect communities in the area.
18. Additionally, Norfolk Constabulary explained to the Commissioner that although police forces routinely publish police workforce statistics, to reduce this to a breakdown per police station would be harmful for the reasons mentioned above. It explained that although it is common

knowledge that police stations have closed, this should not correlate to the standards of policing responses. It explained that providing the number of officers per station would reveal vulnerabilities that may compromise the safety of officers and the public alike.

19. The Commissioner accepts that disclosing this type of information would give criminals valuable insight into where there are fewer police officers stationed within the County and provide details to which geographical areas may be more vulnerable to crime. She also agrees that disclosure would compromise both the safety of the public and officers if used to detect areas of weakness and vulnerability.
20. Based on the information provided, the Commissioner is satisfied that Norfolk Constabulary has demonstrated a causal link between the requested information and the applicable interest relied on, and that disclosure would be likely to have detrimental impact on law enforcement.

The likelihood of prejudice

21. In a case such as this, it is not enough for the information to relate to an interest protected by section 31(1)(a) and/or (b), its disclosure must at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it is likely to occur.
22. With regard to the likelihood of prejudice in this case, Norfolk Constabulary has confirmed that it is relying on the lower level of 'would be likely to' prejudice.

Is the exemption engaged?

23. The Commissioner is satisfied that the prejudice alleged by Norfolk Constabulary is real and of substance, and there is a causal relationship between the disclosure of the requested information and the prejudices which the exemptions are designed to protect.
24. The Commissioner's finding is that it is plausible that the release of the information at issue could be used by interested parties in a way that would be likely to prejudice the prevention or detection of crime and the apprehension or prosecution of offenders. The Commissioner therefore finds that the exemptions provided by sections 31(1)(a) and (b) are engaged.

Public interest test

25. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) of the FOIA outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

26. In his request for internal review, the complainant put forward the following public interest arguments in favour of disclosure:

"At the time of this request there has been – over a couple of years – a serious public debate about the levels of police officer numbers, especially in areas experiencing new forms of crime such as county lines. Some areas have even resorted to recruiting voluntary police forces. There is also currently no proper framework for assessing the disparity in officer numbers per local population beyond ratios per force (which vary hugely across the UK but there is little scrutiny of). At a time when rural communities in particular have seen services of all kinds leave their communities, this disclosure could help provide such data and perhaps even instigate debate over better and wider collection of information."

27. In its refusal notice, Norfolk Constabulary acknowledged that providing the number of officers, based at each station, would ensure that the public are in possession of accurate figures and this would allow for informed public debate. It explained that openness and transparency are fundamental aspects of the FOIA and that there is a public interest in allocation of public funds as well as where local officers are based.

Public interest arguments in favour of maintaining the exemption

28. In its refusal Norfolk Constabulary argued as the following:

"Providing the number of officers based at each station would allow for comparisons to be made across the County. Where a request is submitted to all forces, this comparison can be made on a national bases. This could identify those areas, both locally and nationally, where less officers are based. This would provide criminals with advanced knowledge of the Constabulary's capabilities.

This could result in more crime being committed in these areas and place members of the public at risk or harm. This would lead to the need for more resources to be allocated to these areas. This would be an additional burden on public funds.

...

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the Community.

...

Whilst there is a public interest in officer numbers across the County, and the allocation of public funds, this has to be balanced with ensuring that information is not disclosure which would be useful to those involved in criminal activity. Disclosing the details of officer numbers, by location, would jeopardise the Constabulary's law enforcement capability and compromise public safety."

Balance of the public interest arguments

29. In concluding its public interest test Norfolk Constabulary found that:

"Should the information be released, there is a possibility that the information may be used by criminals to identify police stations that have fewer numbers of Police Officers. This may suggest to criminals that this lessens the capabilities of the local Police Officers to react and respond when a crime is ongoing. This information may elevate their confidence to commit crime in the belief that they will not be apprehended. This is not in the public interest and the balance must fall in favour of exempting the information."

30. In reaching a view on where the public interest lies in this case, the Commissioner has taken into account the views of both the complainant and Norfolk Constabulary.

31. The Commissioner has weighed the public interest in avoiding prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders, against the public interest in openness and transparency.

32. The Commissioner accepts that openness is, in itself, to be regarded as something which is in the public interest. She also acknowledges the public interest arguments in favour of openness and transparency, and scrutiny in numbers of officers in specific areas, as well as allocation of public funds.

33. The Commissioner considers that it is important that the general public has confidence in the police service, which is responsible for enforcing the law.

34. The Commissioner acknowledges the requested information is clearly of genuine interest to the complainant. However, the Commissioner also recognises that disclosure under the FOIA is disclosure to the world at large. She must therefore consider whether the information is suitable for disclosure to anyone and everyone.
35. In that respect, the Commissioner is mindful that Norfolk Constabulary expressed concern that disclosing details of officer numbers, by location, would jeopardise the Constabulary's law enforcement capability and compromise public safety if it were to be used by criminals or potential criminals.
36. Clearly, disclosing information that would allow criminals to understand where there are weaknesses and vulnerabilities, in order to commit a crime more easily, is not in the public interest. The Commissioner is mindful that disclosure could allow those with criminal intent to exploit any current weaknesses that may be highlighted, potentially leading to an increased number of victims of crime. This would be contrary to the policing purposes being relied on here, ie the prevention and detection of crime and the apprehension and prosecution of offenders.
37. 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 - that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the police's ability to accomplish its core function of law enforcement
38. In that respect, she recognises that there is a very strong public interest in protecting the law enforcement capabilities of a police force and she considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders. Clearly, it is not in the public interest to disclose information that may expose vulnerability and compromise the police's ability to keep the public and officers safe.
39. In the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It follows that Norfolk Constabulary was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse to disclose the requested information in part three of this request.

Right of appeal

40. 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: 0300 1234504

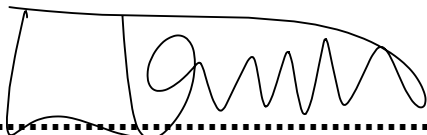
Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed



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