

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 February 2023

Public Authority: Chief Constable of Nottinghamshire Police
Address: Nottinghamshire Police Headquarters
Sherwood Lodge
Arnold
Nottingham
NG5 8PP

Decision (including any steps ordered)

1. The complainant requested information following the arrests of six councillors. Nottinghamshire Police refused to disclose any of the requested information, citing section 31(1)(a) of FOIA (the exemption of the prevention or detection of crime).
2. The Commissioner's decision is that Nottinghamshire Police was entitled to apply section 31(1)(a) of FOIA to withhold the requested information.
3. No steps are required as a result of this notice.

Request and response

4. On 23 November 2022, the complainant wrote to Nottinghamshire Police and requested information in the following terms:

"On 16th November 2022, Nottinghamshire Police arrested six [location redacted] District Councillors most of whom double as Nottinghamshire County Councillors. Several homes were searched and the offices of [location redacted] Independents was also searched.

I would like to know the date on which planning started to organise the operation to make arrests and conduct searches, at what officer level was the decision taken to allow the arrests and searches, how much in its entirety did this operation cost from

the start of planning to the release of the last arrestee on 17th November 2022.

Please inform me of the name given to this operation.

Further, how many people outside of Nottinghamshire Police were informed of [sic] the operation by Nottinghamshire Police [sic] prior to the execution of the operation, at what officer level was it decided that people outside of Nottinghamshire Police should be told prior to the operation and what was the rationale for doing so."

5. Nottinghamshire Police responded on 30 November 2022. It refused to answer any part of the request citing section 31 of FOIA (the law enforcement exemption).

6. The complainant requested an internal review on 1 December 2022.

7. Following its internal review Nottinghamshire Police wrote to the complainant on 2 December 2022. It simply stated that:

"Unfortunately we are unable to provide you with the information you have requested.

If you are not satisfied with this response then you have the right to contact the Information Commissioner's Office."

8. The Commissioner has commented on Nottinghamshire Police's handling of the request and internal review in the 'Other matters' section of this notice.

Scope of the case

9. The complainant contacted the Commissioner on 12 January 2023 to complain about the way her request for information had been handled. Specifically, she complained that she had not received any of the requested information and that none of it constitutes personal information (section 40(2) of FOIA).

10. The Commissioner notes that Nottinghamshire Police has not relied on section 40(2) of FOIA so he has disregarded the complainant's view that the requested information does not constitute 'personal information'.

11. At the outset of his investigation, the Commissioner sought additional submissions from Nottinghamshire Police regarding its reliance on section 31 of FOIA as its position had not been explained fully to the complainant, nor had it detailed its public interest considerations.

12. Nottinghamshire Police provided those submissions on 21 February 2023. It confirmed it was relying on subsection 31(1)(a) of FOIA – the exemption for the prevention or detection of crime.
13. In this case, the Commissioner has examined whether Nottinghamshire Police was entitled to rely on section 31(1)(a) of FOIA to refuse the request in its entirety.

Reasons for decision

Section 31 - law enforcement

14. Section 31 of FOIA says that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
15. Consideration of section 31(1)(a) is a two-stage process - 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.
16. Nottinghamshire Police has explained that section 31(1)(a) was applied to prevent disclosure of information which is part and parcel of an ongoing investigation. It said that disclosure would undermine the ongoing investigation and could jeopardise the outcome, together with jeopardising any information that is obtained from potential witnesses or intelligence that has been received.
17. The Commissioner accepts that the potential prejudice described by Nottinghamshire Police clearly relates to the interests which the exemption contained at section 31(1)(a) of FOIA is designed to protect.
18. Whilst he does not accept that the test for 'would' prejudice is met, the Commissioner has gone on to consider whether the test for 'would be likely' is met.
19. The test that the Commissioner applies when considering whether prejudice 'would be likely' is that there must be a real and significant likelihood of prejudice occurring, but it is not necessary for this outcome to be more probable than not. Applying that test here, the Commissioner accepts that there is a real and significant likelihood of prejudice relevant to section 31(1)(a) through the information in question being combined with existing information in the public domain, being of significant use to those subject to the investigation itself.
20. The Commissioner therefore accepts that disclosure of the requested information would likely prejudice law enforcement operations. The

Commissioner is therefore satisfied that the exemption provided by section 31(1)(a) of FOIA is engaged.

The public interest test

21. Section 31 is a qualified exemption and is subject to the public interest test (the second part of the two-stage process). The Commissioner must consider whether, in all of the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

22. Despite being asked by the Commissioner to provide its public interest arguments, Nottinghamshire Police did not submit any specific points in favour of disclosure of the requested information. It said that due to the ongoing investigation, there are no public interest arguments in favour of disclosure.
23. The Commissioner, however, recognises that there is an inherent public interest in the transparency and accountability of public authorities. There is a clear public interest in the work of public authorities being open to scrutiny to increase diligence.
24. In this case, there is a broad public interest in knowing that the matters which led to the arrests of six councillors have been properly investigated and dealt with.

Public interest arguments in favour of maintaining the exemption

25. Nottinghamshire Police explained that it would not be in a position to disclose any information it may hold in relation to the arrest of the six councillors given that the OIC (Officer in charge) investigation is ongoing.
26. The Commissioner considers that any early release of information during the investigation would be likely to jeopardise the integrity of that investigation into alleged criminal and misconduct acts.

Balance of the public interest

27. The Commissioner recognises that there is an inherent public interest in transparency and accountability of public authorities. He also recognises there is a public interest in ensuring confidence in how those employed by or representing public authorities conduct themselves and behave in an honest, upstanding way.
28. However, he also recognises the strong public interest in protecting the ability of public authorities to enforce the law. The Commissioner

considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, the public interest in avoiding likely prejudice to the ability of Nottinghamshire Police to detect and prevent crime.

29. The Commissioner considers it clear that there is a very substantial public interest in avoiding those outcomes and that this is a public interest factor of considerable weight in favour of maintenance of the exemption.
30. Having taken all the above into account, the Commissioner is satisfied that, in the particular circumstances of this case, the public interest in in the maintenance of section 31(1)(a) of FOIA outweighs that in disclosing the requested information. It follows that he finds that Nottinghamshire Police was not obliged to disclose the information requested.

Other matters

31. The Commissioner has made a record of the incomplete response to the request in this case. Nottinghamshire Police failed to tell the complainant which subsection of section 31 of FOIA it was relying on to withhold the requested information. It also failed to set out any public interest arguments.
32. Nottinghamshire Police's internal review result was also poor. It appears that the internal review was carried out by the same individual who responded to the request. This is poor practice. The Commissioner would remind Nottinghamshire Police that, where resources allow, the review should be handled by a person not previously involved in the handling of the request. Part 5 of the section 45 Code of Practice sets out further details¹.
33. The internal review should also set out the reconsideration of the original response and why (as here) the original decision still stands.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

34. 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

35. 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.
36. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF