

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2023

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
Weston Road
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant requested information about referrals of police and police staff to the Prevent counter-extremism programme. Staffordshire Police would neither confirm nor deny ('NCND') holding any information, citing sections 24(2) (national security), 30(3) (investigations), 31(3) (law enforcement) and 40(5) (personal information) of FOIA.
2. The Commissioner's decision is that Staffordshire Police was entitled to rely on section 24(2) to NCND holding the requested information. As he has found section 24(2) to be correctly engaged, he has not deemed it necessary to consider Staffordshire Police's reliance on the other NCND provisions cited.
3. No steps are required as a result of this notice.

Request and response

4. On 17 March 2023, the complainant wrote to Staffordshire Police and requested information in the following terms:

"In each year from 2017 to 2023 (inclusive), the number of referrals to the Prevent counter-extremism programme made regarding members of your force's staff. For each year, please provide a total figure, then break this down by the type of extremism referred regarding (e.g. far-right, Islamic etc), and by the number of referrals made regarding police officers of any

rank, and the number made with regard to other (e.g. clerical) staff.”

5. Staffordshire Police responded on 13 April 2023. It refused to confirm or deny whether the requested information was held, citing the following ‘neither confirm nor deny’ provisions within the FOIA exemptions:
 - Section 24(2) - National Security
 - Section 30(3) - Investigations
 - Section 31(3) - Law Enforcement
 - Section 40(5) - Personal Information
6. The complainant requested an internal review on 13 April 2023, arguing that the requested information is “of overwhelming” public interest. Following an internal review Staffordshire Police wrote to the complainant on 14 April 2023 maintaining its position.

Scope of the case

7. The complainant contacted the Commissioner on 19 April 2023 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether Staffordshire Police was entitled to NCND whether the requested information was held.

Reasons for decision

Neither confirm nor deny ('NCND')

9. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
10. The decision to use an NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
11. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.

12. Staffordshire Police has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing sections 24(2), 30(3), 31(3) and 40(5) of FOIA. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not Staffordshire Police is entitled to NCND whether it holds any information of the type requested by the complainant.
13. Put simply, in this case the Commissioner must consider whether or not Staffordshire Police is entitled to NCND whether it holds any information about referrals of police and police staff to the Prevent counter-extremism programme.

Section 24 – national security

14. The Commissioner has first considered Staffordshire Police's reliance on section 24(2) of FOIA.
15. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security.
16. The Commissioner considers that section 24(2) of FOIA should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security, but there is no need for a public authority to prove that there is a specific, direct or imminent threat.
17. Staffordshire Police provided its view of its application of sections 24 and 30 jointly when responding to the complainant. The Commissioner has replicated its position below, but has removed the references to section 30 given he is considering Staffordshire Police's reliance on section 24(2). It said that:

"Any release under FOIA is a disclosure to the world, not just to the individual making the request. To confirm or not confirm that information is held pertinent to this request would reveal whether or not Staffordshire Police has monitored its own employees as part of the Prevent programme.

Modern-day policing is intelligence led, and this is particularly pertinent with regard to [...] national security. The public expect police forces to use all powers and tactics available to them to [...] maintain public safety, regardless of who the individual may be.

[...] and the threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. The current UK threat

level from international terrorism, based on intelligence, is assessed as substantial which means that a terrorist attack is likely.

In order to counter criminal and terrorist behaviour, it is vital that the police have the ability to work together, where necessary covertly, to obtain intelligence within current legislative frameworks to assist in the investigative process to ensure the successful arrest and prosecution of offenders who commit or plan to commit acts of terrorism or safeguard those who are vulnerable to being drawn into any criminal activity. To achieve this goal, it is vitally important that information sharing takes place between police officers, members of the public, police forces as well as other law enforcement bodies within the United Kingdom. Such action would support counter terrorism measures in the fight to deprive terrorist networks of their ability to commit crime.

The impact of providing information, if held, under FOI, which aids in identifying whether or not Staffordshire Police monitors its employees and refers them where necessary to Prevent, would provide those intent on committing criminal or terrorists acts with valuable information as to where the police are targeting their investigations.

In addition, to confirm or deny whether information is held in this case would likely undermine the flow of information (intelligence) received from members of the public into the Police Service relating to these types of offenders, thereby undermining National Security and leaving the United Kingdom at risk of more terrorist attacks.

Disclosure of information, if held, specifically where data is sought on the reason for a referral, could lead to distrust and a lack of confidence in the police that its officers or staff were biased and unwilling to aid or favoured certain sectors of the community”.

18. The Commissioner has considered the above arguments put forward by Staffordshire Police and is satisfied it has evidenced real and specific threats that a confirmation or denial as to whether any of its staff have been referred to the Prevent counter-extremism programme would pose a risk to national security. He therefore finds that section 24(2) of FOIA is engaged.

Public interest test

19. Section 24 is subject to the public interest test, as set out in section 2 of FOIA. This means that although section 24 is engaged, confirmation or

denial must still be provided unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying.

Public interest arguments in favour of confirming or denying whether the requested information is held

20. The complainant argued that it was overwhelmingly in the public interest to confirm whether or not police officers and police staff have attended the prevent programme, together with the associated requested breakdown as set out in his request. He did not provide any specific arguments as to why he holds this view.
21. Staffordshire Police recognised the following in favour of a confirmation or denial:

“The public are entitled to know how public funds are spent and resources distributed within an area of policing, particularly with regard to how the police investigate terrorist offending. To confirm whether or not information exists would enable the general public to hold Staffordshire Police to account in relation to how they gather intelligence when monitoring their employees as part of the Prevent programme.

Furthermore, confirming or denying may improve public debate and assist the community to take steps to protect themselves.”

Public interest arguments in favour of maintaining the exemption

22. Staffordshire Police argued the following:

“Taking into account the current security climate within the United Kingdom, no information which may aid a terrorist should be disclosed. To what extent this information may aid a terrorist is unknown, but it is clear that it will have an impact on a force’s ability to monitor terrorist activity. The public entrust the Police Service to make appropriate decisions with regard to their safety and protection. The only way of reducing risk is to be cautious with what is placed into the public domain.

If this information was held and disclosed, and it was to highlight that a particular force is more acceptable to the indoctrination of extremist ideology, this information could be used by terrorists to significantly affect the national infrastructure by targeting their attacks/extremist ideology.”

Balance of the public interest

23. Turning to the balance of the public interest, the question here is whether the public interest in safeguarding national security is outweighed by the public interest in disclosure of the confirmation or denial. Clearly, the public interest in safeguarding national security carries very great weight. In order for the public interest to favour provision of the confirmation or denial, it will be necessary for there to be public interest factors in favour of this of at least equally significant weight.
24. The view of the Commissioner is that there is some valid public interest in confirmation or denial in response to this request. This would increase public knowledge of how public funds are spent, how resources are distributed and increase Staffordshire Police's accountability.
25. The Commissioner considers it to be clearly the case, however, that this public interest does not match the weight of the public interest in safeguarding national security. This means that his conclusion is that the public interest in the maintenance of the exemption provided by section 24(2) outweighs the public interest in disclosure of the confirmation or denial.
26. In view of this finding, Staffordshire Police was not required to confirm or deny whether it held the information requested by the complainant.
27. Given the Commissioner's decision, he has not found it necessary to further consider Staffordshire Police's reliance on sections 30, 31 and 40 of FOIA.

Right of appeal

28. 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

29. 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.

30. 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
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Wilmslow
Cheshire
SK9 5AF**